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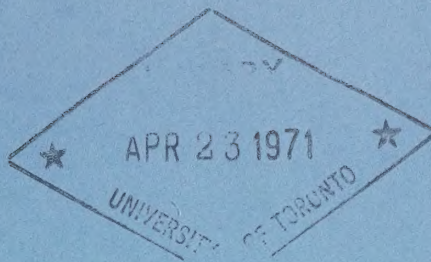


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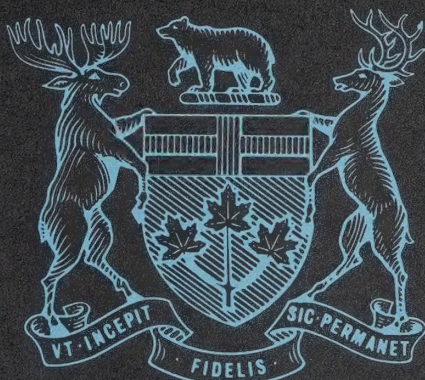
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ONTARIO

Monthly Report

ONTARIO LABOUR RELATIONS BOARD

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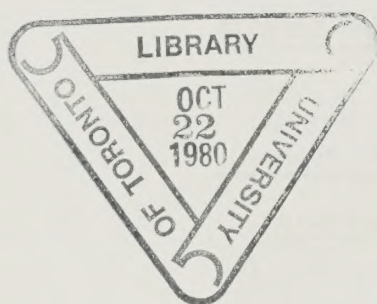
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 ING TRADE UNIONS (INTERVENER).

BEFORE: R.A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS E. BOYER AND
 R. W. TEAGLE.

APPEARANCES AT THE HEARING: HARRIS WINEBERG AND JOHN MEIORIN FOR THE
 APPLICANT; ROBERT McCOMB AND O. CAMPEOTTO FOR THE RESPONDENT; R.
 KOSKIE AND T. MICHAEL FOR THE INTERVENER.

DECISION OF VICE-CHAIRMAN R. A. FURNESS AND BOARD MEMBER E. BOYER:
 DECEMBER 9, 1970.

1. AT THE CONCLUSION OF THE PRESENTATION OF EVIDENCE AND RE-
 PRESENTATIONS CONCERNING THE CIRCUMSTANCES UNDER WHICH THE INTERVENER
 FIRST BECAME AWARE OF THE ALLEGED IMPROPER OR IRREGULAR CONDUCT OF THE
 APPLICANT AND THE RESPONDENT, COUNSEL FOR THE INTERVENER INFORMED THE
 BOARD THAT HE HAD JUST BEEN TOLD BY ONE OF HIS WITNESSES THAT NOTICE
 OF THE APPLICATION FOR CERTIFICATION HAD NOT BEEN POSTED ON THE GUILDER
 DRIVE JOB OF THE RESPONDENT IN THE CITY OF TORONTO. AFTER HEARING THE
 REPRESENTATIONS OF THE PARTIES, THE BOARD INQUIRED INTO THE QUESTION OF
 THE CIRCUMSTANCES AND TIME OF POSTING OF FORM 52, NOTICE TO EMPLOYEES
 OF APPLICATION FOR CERTIFICATION, CONSTRUCTION INDUSTRY. THE TERMINAL
 DATE FIXED FOR THIS APPLICATION FOR CERTIFICATION WAS WEDNESDAY, MAY
 13, 1970.

. . .

14. IN REVIEWING THE EVIDENCE OF DE PAOLI AND DI PIDE, THERE IS
 CLEARLY A CONSIDERABLE DISCREPANCY IN THEIR EVIDENCE CONCERNING THE
 NAMES AND NUMBER OF FOREMEN PRESENT AT THE MEETING WHICH ALLEGEDLY
 OCCURRED ON MAY 12TH OF THIS YEAR. IN ADDITION, DE PAOLI, WHO CLAIMED
 THAT HE HAD POSTED THE FORM 52 AT THE GUILDER DRIVE AND EGLINTON AVENUE
 JOB, TESTIFIED THAT HE DID NOT THINK THAT THE WORDS "CONSTRUCTION IN-
 DUSTRY" WERE WRITTEN IN RED INK ALONG THE MARGIN THE PAPERS THAT HE
 POSTED. WE NOTE THAT THE WORDS "CONSTRUCTION INDUSTRY" APPEAR ALONG
 THE RIGHT HAND MARGIN OF BOTH SHEETS OF FORM 52 AND ARE PRINTED IN
 LARGE RED CAPITALS ALMOST ONE HALF OF AN INCH HIGH. WE ALSO NOTE THAT
 LORENZON, WHO WAS ALSO A FOREMAN AT THE GUILDER DRIVE AND EGLINTON
 AVENUE JOB IN MAY OF THIS YEAR, TESTIFIED THAT THERE WERE THREE PAGES
 IN THE DOCUMENTS THAT HE POSTED. THE THREE FOREMEN, DE PAOLI, DI PIDE
 AND LORENZON WERE MOST INCONVINCING IN THEIR TESTIMONY AND WERE ALSO
 UNCOMPROMISINGLY VAGUE AS TO WHY THEY RECALLED THAT THEY ALLEGEDLY
 POSTED THE FORM 52 ON TUESDAY, MAY 12TH OF THIS YEAR RATHER THAN ON
 ANY OTHER TUESDAY OF THIS YEAR. THERE IS ALSO THE UNEXPLAINED CON-
 FFLICT IN THE TESTIMONY BEFORE THE BOARD FROM CAMPEOTTO AND ONGARO AS
 TO THE DATE ON WHICH THE FORMER WAS SAID TO HAVE POSTED FORM 52 ON
 THE HIGH PARK JOB.

15. IN CONTRAST, LUIZ AND HENRIQUES GAVE THEIR TESTIMONY IN A STRAIGHTFORWARD MANNER AND CORROBORATED EACH OTHER'S TESTIMONY. THEIR CREDIBILITY WAS UNSHAKEN UPON CROSS-EXAMINATION. WE ACCEPT THEIR TESTIMONY IN PREFERENCE TO THAT OF THE FOREMEN AND FIND THAT THE GREEN NOTICES POSTED AT THE GUILDER DRIVE AND EGLINTON AVENUE JOB PRIOR TO THE TERMINAL DATE OF THIS APPLICATION WERE NOT COPIES OF FORM 52.

16. HAVING REGARD TO THE FOREGOING WE FIND THAT THE FORMS 52, NOTICE TO EMPLOYEES OF APPLICATION FOR CERTIFICATION, CONSTRUCTION INDUSTRY, WERE NOT POSTED AT THE GUILDER DRIVE AND EGLINTON AVENUE JOB PRIOR TO THE TERMINAL DATE OF MAY 13, 1970. ACCORDINGLY, THE REGISTRAR IS DIRECTED TO EXTEND THE TERMINAL DATE AND TO CAUSE THE EMPLOYEES AFFECTED BY THIS APPLICATION FOR CERTIFICATION TO BE SERVED WITH COPIES OF FORM 52.

17. IN VIEW OF THE FACT THAT WE HAVE DIRECTED THE REGISTRAR TO EXTEND THE TERMINAL DATE AND IN THE CIRCUMSTANCES OF THIS CASE, THE INTERVENER WILL BE PERMITTED TO ADDUCE EVIDENCE ON THE ALLEGATIONS OF IMPROPER OR IRREGULAR CONDUCT FILED ON JUNE 11, 1970, AGAINST THE APPLICANT AND THE RESPONDENT.

DECISION OF BOARD MEMBER R. W. TEAGLE: DECEMBER 9, 1970.

I WOULD HAVE FOUND THAT THE FORMS 52, NOTICE TO EMPLOYEES OF APPLICATION FOR CERTIFICATION, CONSTRUCTION INDUSTRY, WERE POSTED BY THE RESPONDENT PRIOR TO THE TERMINAL DATE. ACCORDINGLY, I WOULD NOT HAVE ENTERTAINED THE CHARGES OF IMPROPER OR IRREGULAR CONDUCT FILED BY THE INTERVENER AND WOULD HAVE GRANTED CERTIFICATION TO THE APPLICANT.

18069-70-R: NURSES' ASSOCIATION JOSEPH BRANT MEMORIAL HOSPITAL (APPLICANT) V. THE BURLINGTON-NELSON HOSPITAL (RESPONDENT).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS O. HODGES AND H. F. IRWIN.

DECISION OF THE BOARD: JANUARY 26, 1971.

. . .

3. THIS APPLICATION FOR CERTIFICATION WAS FILED ON JULY 6, 1970, SOME FIVE WEEKS AFTER THE RESPONDENT HAD REORGANIZED ITS NURSING SERVICES. ON MAY 31, 1970, A NEW SYSTEM KNOWN AS THE FRIESEN SYSTEM WAS INTRODUCED. THIS SYSTEM OF NURSING CALLS FOR THE DECENTRALIZATION OF SUPPLIES, RECORDS AND COMMUNICATIONS. THE NURSES UNDER THIS SYSTEM HAVE THE MAJORITY OF THEIR NON-NURSING DUTIES REDUCED. THE RESPONDENT'S DIRECTOR OF NURSING COMPARED THE FORMER METHOD OF NURSING CARE AND THE NEWLY-ADOPTED FRIESEN SYSTEM IN THESE TERMS:

"THE MAJOR DIFFERENCE BETWEEN THE CHARGE NURSE'S FUNCTION UNDER THE FRIESEN CONCEPT AND THE FUNCTION AS PERFORMED PREVIOUSLY BY THE HEAD NURSE AND ASSISTANT HEAD NURSE IS PRIMARILY THAT THE CHARGE NURSE IS RESPONSIBLE COMPLETELY FOR THE QUALITY OF PATIENT CARE AND THE

DEVELOPMENT OF HER PERSONNEL WHICH ARE ONLY TWO OF THE THINGS SHE HAD TO CONTEND WITH BEFORE. BECAUSE SHE HAS A SOMEWHAT SMALLER SCOPE OF RESPONSIBILITY IN TERMS OF PATIENTS AND CORRESPONDINGLY OF PERSONNEL WE (ADMINISTRATION) SAW THIS AS A DEVELOPMENT OF HER OTHER RESPONSIBILITIES TO A GREATER DEPTH."

4. IT WAS AGREED BY THE PARTIES THAT THE EVIDENCE OF MRS. RHEA STRONG WAS REPRESENTATIVE OF AND APPLICABLE TO THE DUTIES AND RESPONSIBILITIES EXERCISED BY ALL OF THE RESPONDENT'S CHARGE NURSES. SHE STATED THAT THE MAJOR DIFFERENCES ENCOUNTERED IN THE CHANGE OF CLASSIFICATION FROM HEAD NURSE TO CHARGE NURSE ARE THAT SHE NO LONGER HAS DIRECT CONTROL OVER THE STAFF THAT SHE HAD PREVIOUSLY AND IS ALSO NO LONGER RESPONSIBLE FOR THE WARD.

5. SHE USUALLY WORKS ONLY THE DAY SHIFT, IS RESPONSIBLE TO HER CO-ORDINATOR AND SHARES A DIVIDED RESPONSIBILITY WITH ANOTHER CHARGE NURSE FOR THE OTHER SHIFTS. SHE IS RELIEVED BY A GRADUATE NURSE AND NOT BY ANOTHER CHARGE NURSE. MRS. STRONG SUPERVISES ONE OR TWO REGISTERED NURSES, ONE OR TWO REGISTERED NURSING ASSISTANTS AND TO A DEGREE A VARYING NUMBER OF STUDENTS. THIS SUPERVISION, WHICH SHE SHARES WITH ANOTHER CHARGE NURSE, CONSISTS OF SEEING THAT THE RULES ARE NOT BROKEN. SHE ALTERNATES WITH ANOTHER CHARGE NURSE IN MAKING UP TIME SCHEDULES FOR SHIFTS AND IN PREPARING THE WEEKLY ASSIGNMENT SHEET. MRS. STRONG PERFORMS THE FORMER DUTY ONCE EVERY TWELVE WEEKS.

6. WHEN A MINOR RULE IS BROKEN SHE COUNSELS THE EMPLOYEE. IF THE INFRACTION WAS SEVERE ENOUGH SHE WOULD DISCUSS THE MATTER WITH HER CO-ORDINATOR AND SEND A REPORT TO HER. IN THE EVENT THAT THE MINOR INFRACTION WAS REPEATED THE CHARGE NURSE WOULD TALK TO THE PERSON AGAIN AND IF THE INFRACTION WAS REPEATED AGAIN SHE WOULD BRIEF HER CO-ORDINATOR AND ASK HER TO SPEAK TO THE PERSON INVOLVED. IF THE INFRACTION WAS REPEATED AFTER THE CO-ORDINATOR HAD SPOKEN TO THE PERSON, THE CHARGE NURSE WOULD AGAIN REPORT THE MATTER TO HER CO-ORDINATOR.

7. SIMILARLY, IF A NURSE APPEARED UNFIT TO PERFORM HER DUTIES, SHE WOULD TALK TO THE NURSE. IF SHE STILL FELT THAT THE NURSE WAS UNABLE TO FULFILL HER DUTIES SHE WOULD ASK HER CO-ORDINATOR TO SPEAK TO THE NURSE. MRS. STRONG WOULD, IN THESE CIRCUMSTANCES, ALTHOUGH SHE HAS NEVER HAD OCCASION TO DO SO, STATE THE FACTS TO HER CO-ORDINATOR AND MAKE A RECOMMENDATION.

8. THE WARD CLERK PREPARES THE PAYBOOK AND ENTERS THE DAYS WORKED. THE CHARGE NURSE CHECKS AND INITIALS IF CORRECT. HOWEVER, SHE DOES NOT BELIEVE THAT SHE HAS ACCESS TO PERSONNEL FILES. SHE HAS NEVER BEEN INFORMED ON THIS LAST POINT AND, IN ANY EVENT, HAS NOT REQUIRED THEM.

9. THE CHARGE NURSE DOES NOT INTERVIEW OR PLAY ANY PART IN THE HIRING PROCESS. MRS. STRONG HAS NOT TERMINATED OR RECOMMENDED TERMINATION OF ANY EMPLOYEE. SHE HAS RECOMMENDED NEITHER PROMOTION NOR DEMOTION. UPON THE REQUEST OF AN EMPLOYEE SHE HAS MADE A VERBAL RE-

COMMENDATION TO EITHER HER CO-ORDINATOR OR THE ASSISTANT DIRECTOR OF NURSING FOR THE TRANSFER OF AN EMPLOYEE. SHE DOES NOT HAVE THE AUTHORITY TO GRANT AN EMPLOYEE A SHORT PERIOD OF TIME OFF. WHEN SUCH A REQUEST IS MADE SHE REFERS IT TO HER CO-ORDINATOR OR THE NURSING OFFICE AND RECOMMENDS THE GRANTING OR REFUSING OF THE REQUEST. SHE THEN RELAYS THE DECISION OF HER SUPERVISOR TO THE PERSON CONCERNED. HER RECOMMENDATIONS HAVE ALWAYS BEEN FOLLOWED. WHEN AN EMPLOYEE LEAVES SHE MAKES OUT A TERMINATION REPORT TOGETHER WITH THE OTHER CHARGE NURSE. THESE TERMINATION REPORTS ARE USUALLY PREPARED PRIOR TO A PERSON LEAVING BUT THEY HAVE NO BEARING ON THE FACT THAT THE PERSON IS LEAVING.

10. MRS. STRONG ESTIMATES THAT SHE SPENDS FORTY PER CENT OF HER TIME DOING THE SAME WORK AS THOSE SHE SUPERVISES AND THE REMAINING SIXTY PER CENT OF HER TIME DOING WORK THAT IS DIFFERENT. SHE IS THE SUPERVISOR REFERRED TO IN A COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE CANADIAN UNION OF PUBLIC EMPLOYEES LOCAL UNION NUMBER 1065 ENTERED INTO ON NOVEMBER 7, 1969. UNDER ARTICLE 12.1 OF THIS AGREEMENT SHE PARTICIPATES IN THE FIRST STEP OF ANY GRIEVANCE. THE FIRST STEP IN THE GRIEVANCE PROCEDURE ENVISAGES A VERBAL PRESENTATION OF THE GRIEVANCE TO THE SUPERVISOR AND A VERBAL ANSWER TO THE GRIEVANCE WITHIN THREE WORKING DAYS FROM THE DATE OF PRESENTATION. IF THE GRIEVANCE IS NOT SETTLED WITH THE FIRST STEP, IT IS THEN PRESENTED IN WRITING TO THE DEPARTMENT HEAD BY THE CHAIRMAN OF THE UNION GRIEVANCE COMMITTEE WHEN A REPLY IN WRITING IS REQUIRED. THERE IS A FURTHER STEP CONTEMPLATED BEFORE AN ARBITRATION BOARD MAY BE INVOKED. CLEARLY THE DEGREE OF PARTICIPATION BY THE SUPERVISOR IN THE GRIEVANCE PROCEDURE IS VERY RESTRICTED IN ITS SCOPE. SUCH A DEGREE OF PARTICIPATION, IN OUR VIEW, WHEN TAKEN BY ITSELF IS NOT SUFFICIENT TO CONFER ON THE SUPERVISOR CONCERNED THE STATUS OF MANAGEMENT NOR DOES IT GIVE HER A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS. REFERENCE IS MADE TO THE ALGOMA STEEL CORPORATION LIMITED CASE, OLRB, M.R., JUNE, 1970, P. 365.

11. WHILE CHARGE NURSES ATTEND STAFF MEETINGS THERE IS NO INDICATION OF WHAT MATTERS ARE DISCUSSED OR INDEED, WHO IS PRESENT AT SUCH MEETINGS. ON AUGUST 12, 1970, THE RESPONDENT ISSUED A JOB DESCRIPTION FOR CHARGE NURSES. IT WAS AT THIS TIME THAT CHARGE NURSES WERE OFFICIALLY INFORMED OF THE ADDITION OF "DISCIPLINES AND SUSPENDS TEAM MEMBERS" TO THEIR DUTIES. THE BOARD NOTES THAT THIS JOB DESCRIPTION DATED AUGUST 12, 1970, APPEARED SOME FIVE WEEKS AFTER THE MAKING OF THIS APPLICATION FOR CERTIFICATION, AND APPROXIMATELY TEN WEEKS AFTER THE INTRODUCTION OF THE CLASSIFICATION OF CHARGE NURSE. WHILE A CHARGE NURSE IS REQUIRED TO MAKE AN EVALUATION OF HER STAFF FROM TIME TO TIME SUCH AN EVALUATION HAS NOT BEEN NECESSARY SINCE THE INTRODUCTION OF THE CLASSIFICATION OF CHARGE NURSE.

12. IT APPEARS TO US THAT THE DUTIES AND RESPONSIBILITIES OF CHARGE NURSES MAY APTLY BE DESCRIBED AS BEING IN TRANSITION AT THIS TIME. HOWEVER, IT IS THE POLICY OF THE BOARD TO CONSIDER THE DUTIES AND RESPONSIBILITIES OF PERSONS WHOSE STATUS IS IN ISSUE AS OF THE DATE OF THE MAKING OF THE APPLICATION. IN THIS CASE, THE RESPONDENT FAILED TO FORMALIZE THE DUTIES AND RESPONSIBILITIES OF CHARGE NURSES

UNTIL WELL AFTER THE DATE OF THE MAKING OF THIS APPLICATION FOR CERTIFICATION. THE FAILURE OF AN EMPLOYER TO CLEARLY INFORM ITS PERSONNEL OF THEIR DUTIES PRIOR TO THE MAKING OF AN APPLICATION FOR CERTIFICATION OF NECESSITY WEIGHS HEAVILY AGAINST ITS CLAIMS WHEN THE STATUS OF AN EMPLOYEE UNDER THE LABOUR RELATIONS ACT IS IN QUESTION. REFERENCE IS MADE TO THE RIVERVIEW HEALTH ASSOCIATION CASE, OLRB, M.R., JUNE 1966, P. 743 AND TO THE BROCKVILLE GENERAL HOSPITAL CASE, OLRB, M.R., JUNE 1967, P. 776.

13. IT IS CLEAR THAT CHARGE NURSES PERFORM CERTAIN DUTIES WHICH REGISTERED NURSES UNDER THEM DO NOT PERFORM AND THAT CHARGE NURSES POSSESS A GREATER RESPONSIBILITY THAN THE EMPLOYEES WHO WORK WITH THEM. WE ARE NOT PERSUADED HOWEVER, ON OUR ANALYSIS OF THE EVIDENCE, THAT CHARGE NURSES EXERCISE OR POSSESS ANY APPRECIABLE DEGREE OF SUPERVISORY AUTHORITY SO AS TO MAKE THEM MANAGERIAL, OR, THAT IN PERFORMING THEIR DUTIES THEY INITIATE OR EFFECTUATE ANY INDEPENDENT DECISION OR POLICIES AFFECTING THE UNIT OR THAT THEY GIVE DIRECTION OR ALLOT WORK TO OTHER EMPLOYEES, SAVE ONLY IN ROUTINE AND PREDETERMINED AREAS SELECTED BY MANAGEMENT. ACCORDINGLY, THE BOARD FINDS THAT CHARGE NURSES NEITHER EXERCISE MANAGERIAL FUNCTIONS NOR ARE EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT, AND ARE THEREFORE INCLUDED IN THE BARGAINING UNIT DEFINED IN PARAGRAPH 14. IN MAKING THIS DETERMINATION THE BOARD HAS NOT CONSIDERED REFERENCES IN THE REPORT OF THE EXAMINER RELATING TO THE DUTIES AND RESPONSIBILITIES OF CHARGE NURSES WHICH TOOK PLACE AFTER THE DATE OF THE MAKING OF THIS APPLICATION ON JULY 6TH, 1970.

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DECISION OF BOARD MEMBER H. F. IRWIN: JANUARY 26, 1971.

1. ON THE EVIDENCE OF MEMBERSHIP FILED WITH THE BOARD BY THE APPLICANT UNION, I AM SATISFIED THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNITS DETERMINED BY THE BOARD WERE MEMBERS OF THE APPLICANT ON JULY 16, 1970, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT. I, THEREFORE, CONCUR IN THE DECISION OF THE BOARD THAT CERTIFICATES SHOULD ISSUE WITH RESPECT TO THE BARGAINING UNITS DEFINED IN PARAGRAPHS 14 AND 17 OF THE BOARD'S DECISION.

2. THE APPLICANT REQUESTED THE INCLUSION OF CHARGE NURSES (FORMERLY DESIGNATED AS HEAD NURSES OR ASSISTANT HEAD NURSES) IN THE BARGAINING UNIT. THE RESPONDENT REQUESTED THEIR EXCLUSION ON THE

BASIS THAT THEY EXERCISE MANAGERIAL FUNCTIONS OR ARE EMPLOYED IN A CONFIDENTIAL CAPACITY IN RESPECT OF LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT. FOLLOWING ITS USUAL PRACTICE IN SUCH CIRCUMSTANCES, THE BOARD APPOINTED AN EXAMINER TO INQUIRE, INTER ALIA, INTO THE DUTIES AND RESPONSIBILITIES OF CHARGE NURSES AND REPORT HIS FINDINGS TO THE BOARD. THE EXAMINER'S REPORT IS DATED DECEMBER 10, 1970.

3. IT IS THE WELL-ESTABLISHED PRACTICE OF THE BOARD TO ASSESS THE EVIDENCE CONTAINED IN THE EXAMINER'S REPORT AS OF THE DATE OF THE APPLICATION. IN THE INSTANT CASE, THERE ARE A NUMBER OF REFERENCES IN THE REPORT RELATING TO THE DUTIES AND RESPONSIBILITIES OF CHARGE NURSES THAT TOOK PLACE AFTER JULY 6, 1970, THE DATE OF THE APPLICATION. CONSEQUENTLY, SUCH EVIDENCE CANNOT BE CONSIDERED BY THE BOARD IN THE INSTANT CASE. IT IS UNFORTUNATE THAT THE MOVING TO THE NEW EXTENSION WINGS OF THE HOSPITAL'S BUILDING, THE INTRODUCTION OF THE FRIESEN CONCEPT AND THE CHANGING OF THE CLASSIFICATION OF HEAD NURSES AND ASSISTANT HEAD NURSES TO CHARGE NURSES SIMULTANEOUSLY OCCURRED ON MAY 31ST, 1970, ONLY FIVE WEEKS PRIOR TO THE FILING OF THIS APPLICATION. IT IS ONLY NATURAL THAT AS A RESULT OF SUCH EXTENSIVE CHANGES THAT A CONSIDERABLE TIME MUST ELAPSE BEFORE ALL THE NEW PROCEDURES AND THE DUTIES AND RESPONSIBILITIES OF CHARGE NURSES AND OTHER SUPERVISORY PERSONNEL ARE FINALIZED. CONSEQUENTLY, THE RESPONDENT HAS BEEN PLACED AT A DISTINCT DISADVANTAGE IN PRESENTING ADMISSIBLE EVIDENCE TO SUPPORT ITS POSITION.

4. ON THE EVIDENCE BEFORE THE BOARD AS OF THE DATE OF THE APPLICATION, I MUST FIND THAT THE DUTIES AND RESPONSIBILITIES OF THE CHARGE NURSES DID NOT QUALIFY THEM FOR EXEMPTION FROM THE BARGAINING UNIT UNDER THE PROVISIONS OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT. HOWEVER, IT MAY WELL BE THAT EVEN NOW, OR IN THE FUTURE, THE DUTIES AND RESPONSIBILITIES OF CHARGE NURSES HAVE BEEN OR WILL BE REQUIRED TO BE ALTERED. IF SUCH IS THE CASE, AND THE RESPONDENT FEELS THAT AS A RESULT OF SUCH CHANGES CHARGE NURSES ARE THEREBY EXCLUDED FROM THE BARGAINING UNIT UNDER SECTION 1(3)(B) OF THE ACT, THE MATTER, IF NECESSARY, MAY BE REFERRED TO THE BOARD UNDER THE PROVISIONS OF SECTION 79(2) OF THE LABOUR RELATIONS ACT FOR ADJUDICATION AND THE BOARD'S DECISION THEREON WILL BE FINAL AND CONCLUSIVE FOR ALL PURPOSES.

18592-70-R: INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) V. ADVANCED WIRE DIE LIMITED (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS P. J. O'KEEFFE AND J. E. C. ROBINSON, Q.C..

APPEARANCES AT THE HEARING: R. M. INNES FOR THE APPLICANT; SAMUEL LERNER, Q.C. AND NOAH BORNE FOR THE RESPONDENT.

DECISION OF THE BOARD: JANUARY 27, 1971.

1. THIS IS AN APPLICATION FOR CERTIFICATION. THE RESPONDENT ALLEGED THAT A COLLECTIVE AGREEMENT DATED JUNE 20, 1967 BETWEEN THE RESPONDENT AND LOCAL UNION No. 120 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (HEREINAFTER REFERRED TO AS LOCAL 120) CONSTITUTES A BAR TO THE APPLICATION. THE AGREEMENT WAS TO REMAIN IN EFFECT UNTIL MIDNIGHT OF JUNE 19, 1969 AND FROM YEAR TO YEAR THEREAFTER SUBJECT TO NOTICE. AT THE INITIAL HEARING INTO THIS MATTER THE RESPONDENT TOOK THE POSITION THAT NO NOTICE HAD BEEN RECEIVED BY IT WITHIN THE TIMES LIMITED BY THE AGREEMENT AND THAT CONSEQUENTLY AS THE AGREEMENT PROVIDES, IT HAD AUTOMATICALLY RENEWED ITSELF.

2. BY WAY OF REPLY TO AN ALLEGATION BY THE APPLICANT THAT LOCAL 120 HAD ABANDONED ITS BARGAINING RIGHTS, THE RESPONDENT FILED WITH THE BOARD THE FOLLOWING TELEGRAM DATED AUGUST 8, 1969 PURPORTING TO HAVE BEEN DISPATCHED TO THE RESPONDENT BY E. A. MOYSE, BUSINESS MANAGER FOR LOCAL 120:

"PLEASE BE ADVISED YOUR LATEST COMPANY PROPOSAL ACCEPTED AT A RATIFICATION MEETING OF THE EMPLOYEES HELD ON AUGUST EIGHTH 1969. ADVISE YOUR EMPLOYEES WHEN TO RETURN TO WORK."

THE BOARD, HAVING CONSIDERED THE EVIDENCE AND ARGUMENT PUT BEFORE IT AT A HEARING ON NOVEMBER 9, 1970, ISSUED THE FOLLOWING DIRECTION ON DECEMBER 2, 1970:

"THE BOARD DIRECTS THAT THIS MATTER BE LISTED FOR CONTINUATION OF HEARING IN ORDER TO AFFORD THE PARTIES AN OPPORTUNITY TO SUBMIT FURTHER

EVIDENCE AND ARGUMENT WITH RESPECT TO THE CIRCUMSTANCES LEADING UP TO THE DISPATCH OF THE TELEGRAM FILED AS EXHIBIT NO. 2 AT THE HEARING OF NOVEMBER 9, 1970 AND AS TO THE EFFECT, IF ANY, OF THE TELEGRAM UPON THE VALIDITY OF THE COLLECTIVE AGREEMENT RAISED AS A BAR TO THE APPLICATION AND UPON THE QUESTION OF ABANDONMENT RAISED BY THE APPLICANT AND ALL OUTSTANDING ISSUES."

3. AT THE SECOND HEARING HELD IN THIS MATTER ON DECEMBER 16, 1970, COUNSEL FOR THE RESPONDENT ADVISED THE BOARD THAT NOTICE OF DESIRE TO BARGAIN HAD IN FACT BEEN SERVED ON THE RESPONDENT BY LOCAL 120 AND THAT ON MAY 14, 1969, CONCILIATION SERVICES WERE GRANTED BY THE MINISTER. ON THE 19TH OF JUNE, 1969, THE MINISTER ADVISED THE PARTIES THAT NO BOARD OF CONCILIATION WOULD BE APPOINTED AND ON JULY 11, 1969 THE EMPLOYEES WENT ON STRIKE.

4. IT IS QUITE OBVIOUS THAT THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND LOCAL 120 CEASED TO OPERATE ON JUNE 19, 1969 AS THE RESULT OF THE NOTICE OF DESIRE TO BARGAIN DELIVERED TO THE RESPONDENT AND THAT THE AGREEMENT CONSEQUENTLY DOES NOT FORM A BAR TO THE PRESENT APPLICATION.

5. IT IS EQUALLY OBVIOUS THAT THERE NEVER WAS AN AGREEMENT MADE BETWEEN THE RESPONDENT AND LOCAL 120 CONFORMING TO THE DEFINITION OF A COLLECTIVE AGREEMENT AS SET OUT IN SECTION 1(1)(c) OF THE LABOUR RELATIONS ACT IN THE FOLLOWING TERMS:

"COLLECTIVE AGREEMENT" MEANS AN AGREEMENT IN WRITING BETWEEN AN EMPLOYER OR AN EMPLOYERS' ORGANIZATION, ON THE ONE HAND, AND A TRADE UNION THAT, OR A COUNCIL OF TRADE UNIONS THAT, REPRESENTS EMPLOYEES OF THE EMPLOYER OR EMPLOYEES OF MEMBERS OF THE EMPLOYERS' ORGANIZATION, ON THE OTHER HAND, CONTAINING PROVISIONS RESPECTING TERMS OR CONDITIONS OF EMPLOYMENT OR THE RIGHTS, PRIVILEGES OR DUTIES OF THE EMPLOYER, THE EMPLOYERS' ORGANIZATION, THE TRADE UNION OR THE EMPLOYEES.

IN THIS CONNECTION, WE WOULD POINT OUT THAT THE BOARD HAS CONSISTENTLY FOUND THAT THE WORD OF THE DEFINITION "AN AGREEMENT IN WRITING" MEANS AN EXECUTED OR SIGNED WRITING BEARING THE SIGNATURES OF THE PARTIES TO THE AGREEMENT. (THE UNITED STEELWORKERS OF AMERICA AND CANADA MACHINERY CORPORATION LIMITED, 61 CLLC ¶16, 194. PEACE RIVER MINING AND SMELTING LTD., O.L.R.B. MONTHLY REPORT, JULY 1970, P. 505. MARSLAND ENGINEERING LIMITED, O.L.R.B. MONTHLY REPORT, APRIL 1970, P. 133).

6. THE APPLICANT TOOK THE POSITION THAT LOCAL 120 HAD ABANDONED ITS BARGAINING RIGHTS WITH RESPECT TO THE EMPLOYEES OF THE RESPONDENT WHOM IT HAD FORMERLY REPRESENTED. THE ARGUMENT IS BASED UPON THE EVIDENCE SET OUT BELOW.

7. FOLLOWING RECEIPT OF THE TELEGRAM, THE RESPONDENT PREPARED A TEXT OF AN AGREEMENT WHICH, ACCORDING TO THE EVIDENCE EMBODIED THE TERMS RATIFIED AT THE MEETING REFERRED TO IN THE TELEGRAM TOGETHER WITH THOSE OTHERS AGREED UPON DURING THE COURSE OF THE NEGOTIATIONS. THIS TEXT WAS FORWARDED TO LOCAL 120 FOR SIGNATURE. LOCAL 120 DID NOT ACKNOWLEDGE RECEIPT OF THE DRAFT AGREEMENT AND DID NOT RETURN IT TO THE RESPONDENT.

8. NOTWITHSTANDING THE FACT THAT LOCAL 120 DID NOT RETURN A SIGNED COPY OF THE DOCUMENT, THE RESPONDENT PROCEEDED TO PUT INTO EFFECT THE WAGE RATES AND OTHER CONDITIONS SET OUT IN THE PROPOSED AGREEMENT. IN ACCORDANCE WITH CHECK-OFF PROVISIONS SET OUT IN THE PROPOSED AGREEMENT, THE RESPONDENT DEDUCTED UNION DUES FROM THE EMPLOYEES IN THE BARGAINING UNIT AT THE END OF THE FIRST PAY PERIOD, FOLLOWING THE RETURN TO WORK OF THE EMPLOYEES. THE RESPONDENT SOUGHT DIRECTION FROM MR. PETTA, A DISTRICT OFFICER OF THE I.B.E.W. AS TO WHAT IT SHOULD DO WITH THE DUES WHICH IT HAD COLLECTED. THE EVIDENCE IS THAT PETTA SAID TO THE RESPONDENT "YOU OWE US NOTHING". HE ADVISED THE COMPANY TO TALK TO MR. MOYSE WHO IN TURN REFERRED THE RESPONDENT BACK TO PETTA. IN THE RESULT, THE I.B.E.W. AND LOCAL 120 DECLINED TO ACCEPT THE PROCEEDS OF THE CHECK-OFF. THIS INCIDENT OCCURRED, AS NOTED, AT THE END OF THE FIRST PAY PERIOD FOLLOWING RETURN OF THE EMPLOYEES TO WORK. THE PROPOSED AGREEMENT PROVIDES FOR PAYMENT OF WAGES ON FRIDAY OF EACH WEEK SO THAT IT WOULD APPEAR THAT IT TOOK PLACE ON OR ABOUT AUGUST 15, 1969. THE EVIDENCE IS THAT THERE HAS BEEN NO COMMUNICATION OR CONTACT OF ANY KIND BETWEEN THE RESPONDENT AND LOCAL 120 SINCE THAT DATE.

9. EVIDENCE WAS GIVEN ON BEHALF OF THE APPLICANT BY ELSIE MANN. SHE TESTIFIED THAT SHE HAD BEEN AN EMPLOYEE OF THE RESPONDENT AND A SHOP STEWARD FOR LOCAL 120 AND ALSO A MEMBER OF LOCAL 120 NEGOTIATION COMMITTEE IN 1969. SHE ATTENDED THE RATIFICATION MEETING REFERRED TO IN THE TELEGRAM OF AUGUST 8, 1969. THE WITNESS IDENTIFIED TWO TYPE-WRITTEN DOCUMENTS AS EMBODYING THE RESPONDENT'S PROPOSALS ON ADJUSTMENTS TO THE WAGE RATES AND ON OTHER AMENDMENTS TO THE COLLECTIVE AGREEMENT WHICH HAD BEEN PLACED BEFORE THE EMPLOYEES AT THE MEETING OF AUGUST 8, 1969 (EXHIBIT NO. 5). SHE CONFIRMED THAT THESE WERE THE PROPOSALS THAT HAD BEEN ACCEPTED BY THE EMPLOYEES PRESENT AT THE MEETING AND THAT THE TELEGRAM HAD BEEN DISPATCHED ACCORDINGLY. THE WITNESS FURTHER TESTIFIED HOWEVER THAT LOCAL 120 WOULD NOT SIGN THE PROPOSED AGREEMENT BECAUSE IT FOUND THE LANGUAGE TO BE UNSATISFACTORY.

10. IN OUR OPINION, THE WHOLE COURSE OF CONDUCT OF LOCAL 120,

SINCE THE DISPATCH OF THE TELEGRAM OF AUGUST 8, 1969, TO THE DATE OF THE PRESENT APPLICATION - A PERIOD OF APPROXIMATELY A YEAR AND A HALF OF SILENCE AND INACTIVITY - REQUIRES SOME EXPLANATION FROM THAT UNION IF IT IS CONCERNED AT ALL ABOUT THE CHALLENGE TO ITS BARGAINING RIGHTS INHERENT IN THIS APPLICATION. THIS IS PARTICULARLY SO SINCE THE FORMAL APPLICATION FOR CERTIFICATION, A COPY OF WHICH WAS SERVED UPON LOCAL 120 CONTAINS THE FOLLOWING ASSERTION:

"THE UNIT DESCRIBED ABOVE WAS PREVIOUSLY CERTIFIED BY THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 120. IT IS MY UNDERSTANDING THE UNIT WAS ABANDONED AFTER AN UNSUCCESSFUL STRIKE ACTION."

11. THE FAILURE OF LOCAL 120 TO MAKE ANY ATTEMPT TO REPUDIATE THE SUGGESTION THAT IT HAD ABANDONED ITS BARGAINING RIGHTS WHEN THE SUBJECT WAS SPECIFICALLY RAISED IN THE APPLICATION SHOULD, STANDING ALONE, AROUSE DOUBTS AS TO ITS CONTINUING STATUS AS BARGAINING AGENT. WHEN THIS IS VIEWED IN CONJUNCTION WITH ITS CONDUCT PRECEDING THE APPLICATION, IT LEAVES US IN NO DOUBT THAT THE LOCAL 120 HAS ABANDONED ITS BARGAINING RIGHTS AND WE, THEREFORE, FIND THAT LOCAL 120 WAS NOT AT THE DATE OF THE APPLICATION HEREIN AND IS NO LONGER THE BARGAINING AGENT FOR THE EMPLOYEES OF ADVANCED WIRE DIE LIMITED. THERE IS, THEREFORE, NOTHING STANDING IN THE WAY OF THE PRESENT APPLICATION.

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13. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

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15. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

18676-70-R: INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (APPLICANT) V. RIVERSIDE HOSPITAL OF OTTAWA (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS P. J. O'KEEFFE AND J.E.C. ROBINSON, Q.C..

APPEARANCES AT THE HEARING: J. SULLIVAN AND E. HEDGES FOR THE APPLICANT, D. ALAN PAGE FOR THE RESPONDENT, NO ONE FOR THE OBJECTORS.

DECISION OF BOARD MEMBERS P. J. O'KEEFFE AND J.E.C. ROBINSON, Q.C.:
JANUARY 6, 1971.

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2. THIS IS AN APPLICATION FOR CERTIFICATION WHEREIN BOTH THE APPLICANT AND THE RESPONDENT HAVE SUGGESTED A BARGAINING UNIT DESCRIBED AS FOLLOWS:-

ALL EMPLOYEES OF RIVERSIDE HOSPITAL OF OTTAWA AT ITS LOCATION 1967 RIVERSIDE DRIVE, OTTAWA 8, ONTARIO, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL, REGISTERED NURSING ASSTS., OFFICE AND CLERICAL STAFF, SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANK OF FOREMEN, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, PLANT SUPERINTENDENT, ASSISTANT PLANT SUPERINTENDENT AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN RIVERSIDE HOSPITAL OF OTTAWA AND THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 796.

3. WHILE IT IS A FACT THAT THE RESPECTIVE PARTIES HAVE AGREED BETWEEN THEMSELVES TO THE EXCLUSION OF REGISTERED NURSING ASSISTANTS FROM THEIR SUGGESTED BARGAINING UNITS, IT HAS FOR SOME TIME BEEN A POLICY OF THE BOARD TO INCLUDE REGISTERED NURSING ASSISTANTS IN "ALL EMPLOYEE" BARGAINING UNITS FOR HOSPITALS.

4. THIS HAS BEEN DONE FOR A VARIETY OF REASONS INCLUDING THEIR COMMUNITY OF INTEREST WITH OTHER EMPLOYEES IN AN "ALL EMPLOYEE" UNIT AND A DESIRE BY THE BOARD TO AVOID FRAGMENTATION OF UNITS.

5. WE MUST THEREFORE FIND THAT THE AGREEMENT OF THE PARTIES TO EXCLUDE REGISTERED NURSING ASSISTANTS DOES VIOLENCE TO THE BOARD'S LONG ESTABLISHED POLICY AND WE ARE THEREFORE UNABLE TO ACCEPT SUCH AGREEMENT.

6. THE BOARD THEREFORE FINDS THAT ALL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANKS OF SUPERVISOR AND FORE-

MAN, PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 796, OFFICE AND CLERICAL STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

7. FOR THE PURPOSES OF CLARITY, THE BOARD DECLARES THAT THE TERM TECHNICAL PERSONNEL COMPRISES PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, ELECTRO-ENCEPHALOGRAPHISTS, ELECTRICAL SHOCK THERAPISTS, LABORATORY, RADIOLOGICAL, PATHOLOGICAL AND CARDIOLOGICAL TECHNICIANS.

8. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON NOVEMBER 24, 1970, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

9. THE APPLICATION IS THEREFORE DISMISSED.

DECISION OF J. D. O'SHEA, Q.C., VICE-CHAIRMAN: JANUARY 6, 1971.

1. THIS IS AN APPLICATION FOR CERTIFICATION WHEREIN THE APPLICANT HAS APPLIED TO REPRESENT ALL EMPLOYEES OF THE RESPONDENT HOSPITAL WITH CERTAIN EXCEPTIONS. THE BARGAINING UNIT WHICH THE APPLICANT CLAIMED TO BE APPROPRIATE FOR COLLECTIVE BARGAINING WAS IN SUBSTANTIALLY THE SAME FORM AS THAT WHICH THE BOARD USUALLY FINDS TO BE APPROPRIATE FOR A HOSPITAL BARGAINING UNIT EXCEPT THAT THE APPLICANT ALSO SOUGHT TO EXCLUDE REGISTERED NURSING ASSISTANTS. IN ITS REPLY TO THE APPLICATION THE RESPONDENT ALSO SUGGESTED THAT THE APPROPRIATE BARGAINING UNIT SHOULD EXCLUDE REGISTERED NURSING ASSISTANTS.

2. NONE OF THE REGISTERED NURSING ASSISTANTS FILED A STATEMENT OF DESIRE TO MAKE REPRESENTATIONS IN THIS MATTER.

3. AT THE HEARING, THE BOARD DREW THE ATTENTION OF THE PARTIES TO THE FACT THAT THE UNIT PROPOSED BY THEM WAS NOT IN ACCORD WITH THE USUAL DESCRIPTION OF HOSPITAL BARGAINING UNITS ADOPTED BY THE BOARD IN OTHER CASES. THE BOARD REMINDED THE PARTIES THAT IT WAS THE BOARD'S USUAL PRACTICE TO INCLUDE REGISTERED NURSING ASSISTANTS IN AN "ALL EMPLOYEE" UNIT OF A HOSPITAL. IN RESPONSE TO THE BOARD'S COMMENTS, THE APPLICANT ALLUDED TO THE FACT THAT THE RESPONDENT'S REGISTERED NURSING ASSISTANTS WERE DESIROUS OF BARGAINING SEPARATELY FROM THE HOUSEKEEPING,

MAINTENANCE AND SERVICE EMPLOYEES WITH WHOM WE ARE HERE CONCERNED. IN RECOGNITION OF THIS SITUATION THE APPLICANT WAS AGREEABLE TO EXCLUDE REGISTERED NURSING ASSISTANTS FROM THE BARGAINING UNIT IN THIS CASE. THE RESPONDENT AGREED WITH THE APPLICANT THAT IT WOULD BE APPROPRIATE TO EXCLUDE REGISTERED NURSING ASSISTANTS FROM THE BARGAINING UNIT.

4. THE BOARD IN THE PAST HAS RECOGNIZED THAT IF IT WERE NOT FOR THE HISTORY OF INCLUDING REGISTERED NURSING ASSISTANTS IN "ALL EMPLOYEE" HOSPITAL BARGAINING UNITS IT MIGHT NOT INCLUDE THEM IN A BARGAINING UNIT WITH SUCH EMPLOYEES. IN THE BOARD OF HEALTH OF THE YORK COUNTY HEALTH UNIT CASE, OLRB MONTHLY REPORT, APRIL 1967, P. 62, THE BOARD AT PAGE 63 STATED, IN PART, AS FOLLOWS:

. . . IT MAY BE THAT IF THE BOARD WERE FACED FOR THE FIRST TIME WITH THE PROBLEM OF DETERMINING THE APPROPRIATE BARGAINING UNIT FOR REGISTERED NURSES AND REGISTERED NURSING ASSISTANTS, IT MIGHT WELL DECIDE THAT EMPLOYEES WHO ARE CONCERNED WITH DIRECT PATIENT CARE WOULD SHARE A COMMUNITY OF INTEREST WHICH WOULD ENTITLE THEM TO BE BARGAINED FOR IN THE SAME BARGAINING UNIT. . .

5. IN THE BRANTOX HOLDINGS LIMITED CASE, OLRB MONTHLY REPORT, NOVEMBER 1969, P. 976, THE BOARD STATED THAT:

THE MAIN CONSIDERATION TO BE DEALT WITH BY THE BOARD IS THE FACT THAT THE BOARD IN ITS DECISION OF AUGUST 8, 1969 DETERMINED THE EMPLOYEES AT THE BURGESSVILLE LOCATION FORMED AN APPROPRIATE UNIT. HOWEVER, A FACTOR WHICH WAS NOT BEFORE THE BOARD IN THAT APPLICATION AND WITH WHICH THIS DIVISION OF THE BOARD MUST DEAL IS THE FACT THAT THE PARTIES WHO WILL BE BARGAINING, I.E. THE APPLICANT AND THE RESPONDENT, HAVE AGREED TO THE DESCRIPTION OF THE BARGAINING UNIT. AS THE BOARD STATED IN THE CORPORATION OF THE TOWNSHIP OF MARKHAM CASE, OLRB MONTHLY REPORT, AUGUST 1969, P. 592, "THE BOARD SHOULD ALSO TAKE INTO ACCOUNT THE GENERAL PRACTICE IN THE PARTICULAR INDUSTRY AND MAY BE GUIDED BY THE AGREEMENT OF THE PARTIES". SINCE THE PARTIES WHO WILL BE BARGAINING HAVE AGREED TO THE DESCRIPTION OF THE BARGAINING UNIT IN THE INSTANT CASE, THIS FACTOR TOGETHER WITH THE OTHER EVIDENCE IN THIS CASE OUTWEIGHS OTHER CONSIDERATIONS. . .

6. COUNSEL FOR BOTH PARTIES IN THIS MATTER ARE EXPERIENCED AND KNOWLEDGEABLE IN LABOUR RELATION MATTERS. IT MUST BE ASSUMED THAT WHEN THEY HAVE AGREED TO THE DESCRIPTION OF A BARGAINING UNIT WHICH DEPARTS FROM PAST PRACTICE THEY HAVE RECOGNIZED CERTAIN PROBLEMS THEY MUST FACE AND HAVE ATTEMPTED TO OVERCOME THEM WITH THE VIEW OF PROMOTING THE FUTURE LABOUR RELATIONS BETWEEN THE PARTIES.

7. SINCE THE BOARD HAS IN THE PAST QUESTIONED THE PROPRIETY OF INCLUDING REGISTERED NURSING ASSISTANTS IN AN ALL EMPLOYEE HOSPITAL BARGAINING UNIT AND SINCE THE PARTIES, WHO ARE BEST ACQUAINTED WITH THE PROBLEMS THEY MUST FACE IN A COLLECTIVE BARGAINING RELATIONSHIP, HAVE AGREED TO EXCLUDE REGISTERED NURSING ASSISTANTS, I FIND THAT THESE FACTORS OUTWEIGH THE CONSIDERATION OF THE HISTORY OF THEIR INCLUSION IN ALL EMPLOYEE BARGAINING UNITS.

8. I AM OF OPINION THAT THE BOARD OUGHT TO BE GUIDED BY THE AGREEMENT OF THE PARTIES IN THE CIRCUMSTANCES OF THIS CASE SINCE THAT AGREEMENT APPEARS TO REFLECT THE WISHES OF THE CLASSIFICATION WHICH THE PARTIES HAVE AGREED TO EXCLUDE FROM THE BARGAINING UNIT. I FIND NO PARTICULAR MERIT IN RIGIDLY ADHERING TO A PAST PRACTICE WHICH HAS PREVIOUSLY BEEN QUESTIONED, MERELY FOR THE SAKE OF PRESERVING THE PAST PRACTICE, WHERE THERE ARE COUNTERVAILING CONSIDERATIONS. IN RECOGNITION OF THE REALITIES OF A BARGAINING PROBLEM THAT THE PARTIES HAVE ATTEMPTED TO RESOLVE TO THEIR MUTUAL SATISFACTION, I WOULD ACCORDINGLY GIVE EFFECT TO THE AGREEMENT OF THE PARTIES IN THIS CASE. I FIND NOTHING OBJECTIONABLE IN ALLOWING THE PARTIES TO AGREE TO EXCLUDE REGISTERED NURSING ASSISTANTS FROM THE ALL EMPLOYEE BARGAINING UNIT IN THESE CIRCUMSTANCES. I AM OF THE VIEW THAT WHERE THE PARTIES SO AGREE, REGISTERED NURSING ASSISTANTS SHOULD BE ALLOWED TO JOIN WITH EMPLOYEES IN OTHER EXCLUDED CLASSIFICATIONS TO FORM AN APPROPRIATE TAG-END BARGAINING UNIT IF THEY SO DESIRE.

18709-70-R: THE TORONTO UNION OF TAXI EMPLOYEES (APPLICANT) V. HOVE TAXI LTD. (RESPONDENT).

- AND -

18710-70-R: THE TORONTO UNION OF TAXI EMPLOYEES (APPLICANT) V. GOLD-LIGHT TAXI LTD. (RESPONDENT).

- AND -

18714-70-R: THE TORONTO UNION OF TAXI EMPLOYEES (APPLICANT) V. ELLEE TAXI LTD. (RESPONDENT).

- AND -

18715-70-R: THE TORONTO UNION OF TAXI EMPLOYEES (APPLICANT) V. SAY-GO TAXI LTD. (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

DECISION OF THE BOARD:

JANUARY 25, 1971.

1. THIS IS AN APPLICATION FOR CERTIFICATION WHEREIN THE APPLICANT REQUESTED THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN.
2. THE DOCUMENTARY EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT IN THIS CASE FAILS TO DISCLOSE WHETHER ANY MONEY PAYMENT WAS MADE BY THE PERSONS APPLYING FOR MEMBERSHIP. THE BOARD IS THEREFORE UNABLE TO FIND THAT ANY OF THE PERSONS WHO SIGNED AN APPLICATION FOR MEMBERSHIP CARD ON BEHALF OF THE APPLICANT ARE MEMBERS WITHIN THE MEANING OF SECTION 1(1)(GA) OF THE LABOUR RELATIONS ACT.
3. SINCE THE APPLICANT'S DOCUMENTARY EVIDENCE OF MEMBERSHIP FAILS TO DISCLOSE MONEY PAYMENT, SUCH EVIDENCE ACCORDINGLY FAILS TO ESTABLISH THAT THE PERSONS WHO SIGNED MEMBERSHIP CARDS WERE MEMBERS OF THE APPLICANT UNION AT THE TIME THE APPLICATION WAS MADE. THE TERMINAL DATE OF THIS APPLICATION WAS DECEMBER 2, 1970. IN VIEW OF THE PROVISIONS OF SECTION 48 OF THE BOARD'S RULES OF PROCEDURE, THE APPLICANT IS PRECLUDED FROM FILING ADDITIONAL DOCUMENTARY EVIDENCE OF MEMBERSHIP IN THIS CASE.
4. IT THEREFORE APPEARS TO THE BOARD ON AN EXAMINATION OF THE RECORDS OF THE APPLICANT AND THE RECORDS OF THE RESPONDENT THAT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN ANY VOTING CONSTITUENCY WHICH THE BOARD MIGHT DEEM TO BE APPROPRIATE WERE MEMBERS OF THE APPLICANT AT THE TIME THE APPLICATION WAS MADE.
5. THE BOARD THEREFORE FINDS THAT THE APPLICANT HAS NOT MADE OUT A PRIMA FACIE CASE FOR THE REMEDY REQUESTED AND THE APPLICATION IS THEREFORE DISMISSED PURSUANT TO THE PROVISIONS OF SECTION 46(1) OF THE BOARD'S RULES OF PROCEDURE.

18716-70-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. THE CORPORATION OF THE CITY OF STRATFORD (RESPONDENT) v. THE STRATFORD PROFESSIONAL FIRE FIGHTERS ASSOCIATION LOCAL #534 INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS (INTERVENER).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND H. F. IRWIN.

DECISION OF VICE-CHAIRMAN FRANK V. BOSCARIOL AND BOARD MEMBER O. HODGES: JANUARY 22, 1971.

1. PURSUANT TO THE INTERIM REPORT OF THE EXAMINER DATED DECEMBER 30, 1970, THE PARTIES HAVE REQUESTED THAT THE BOARD DEAL WITH CERTAIN ISSUES PRIOR TO THEIR PROCEEDING WITH FURTHER REPRESENTATIONS BEFORE THE EXAMINER.

2. THE RELEVANT FACTS DEALING WITH THE QUESTION OF VOLUNTARY RECOGNITION MAY BE SUMMARIZED AS FOLLOWS. ON AUGUST 24, 1970, THE RESPONDENT BY RESOLUTION AGREED TO ADVISE THE APPLICANT THAT EFFECTIVE JANUARY 1, 1971, IT WOULD VOLUNTARILY RECOGNIZE FOUR CLASSIFICATIONS OF EMPLOYEES AS FALLING INTO THE BARGAINING UNIT OF LOCAL 197 OF THE APPLICANT. THESE CLASSIFICATIONS CONSIST OF METER MAINTENANCE MEN, BY-LAW ENFORCEMENT OFFICERS, STREET SIGNS AND MARKING MAINTENANCE MEN, AND LASTLY, CUSTODIANS, ENCOMPASSING IN ALL SOME TEN EMPLOYEES.

3. THERE IS ON FILE WITH THE BOARD A COLLECTIVE AGREEMENT DATED OCTOBER 31, 1969, ENTERED INTO BETWEEN THE RESPONDENT AND LOCAL 197 OF THE APPLICANT. THE AGREEMENT BEARS A TERMINATION DATE OF DECEMBER 31, 1970 AND PURPORTS TO INCLUDE ALL EMPLOYEES OF THE RESPONDENT AT THE CEMETERY, IN THE BOARD OF WORKS DEPARTMENT AND IN THE BOARD OF PARK MANAGEMENT. THE "INSIDE" CITY HALL EMPLOYEES ARE SPECIFICALLY EXCLUDED FROM THE BARGAINING UNIT.

4. BY LETTER DATED SEPTEMBER 8, 1970, THE APPLICANT ACKNOWLEDGED RECEIPT OF NOTICE OF THE RESOLUTION AND AGREED THAT THE NAMED CLASSIFICATIONS BE INCLUDED IN THE BARGAINING UNIT OF LOCAL 197 EFFECTIVE JANUARY 1, 1971.

5. ON NOVEMBER 23, 1970, THE APPLICANT FILED A FORMAL APPLICATION FOR CERTIFICATION BEFORE THE BOARD AND PROPOSED AN "ALL EMPLOYEE" BARGAINING UNIT EXCEPTING CERTAIN EXCLUSIONS NOT HERE RELEVANT AND ALL PERSONS COVERED UNDER COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND LOCAL 197.

6. THE RESPONDENT MAINTAINS THAT IN VIEW OF THE FACT THAT IT HAD VOLUNTARILY RECOGNIZED THE 10 EMPLOYEES AS PART OF LOCAL 197, THAT THEREFORE THESE PERSONS SHOULD BE EXCLUDED FROM THE PROPOSED BARGAINING UNIT APPLIED FOR BY THE APPLICANT.

7. IT IS NOTEWORTHY THAT ALTHOUGH LOCAL 197 WAS SERVED WITH NOTICE OF THIS APPLICATION, NO ONE APPEARED ON ITS BEHALF AT THE INITIAL HEARING OF THIS MATTER ON DECEMBER 8, 1970. IN ADDITION, THERE IS NO EVIDENCE BEFORE US OF ANY RECOGNITION DOCUMENT EXECUTED BETWEEN THE RESPONDENT AND LOCAL 197. IN THE ABSENCE OF ANY EVIDENCE PERTAINING TO THE APPLICANT'S AUTHORITY TO ACT AS AGENT FOR LOCAL 197, WE CANNOT CONSTRUE THE DOCUMENTS REFERRED TO IN PARAGRAPHS 2 AND 4 HEREOF AS CONFERRING BARGAINING RIGHTS TO LOCAL 197 ON BEHALF OF THE 10 EMPLOYEES. MOREOVER, THESE EMPLOYEES ARE NOT INCLUDED IN THE PAY-ROLL DEDUCTION DUES NOR ARE THEY PAYING DUES ON A VOLUNTARY BASIS TO LOCAL 197.

8. ACCORDINGLY, WE FIND THAT IN THESE CIRCUMSTANCES THE ABOVE EMPLOYEES ARE NOT REPRESENTED BY LOCAL 197 AND THEREFORE REPRESENTA-

TIONS WILL BE ENTERTAINED AS TO WHETHER THEY ARE APPROPRIATE FOR INCLUSION IN THE BARGAINING UNIT AS PROPOSED BY THE APPLICANT.

9. HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES IN RELATION TO THE LIBRARY EMPLOYEES, THE BOARD IS SATISFIED THAT THESE EMPLOYEES ARE NOT APPROPRIATE FOR INCLUSION IN THE PROPOSED BARGAINING UNIT.

10. MR. S. GRIZZLE, EXAMINER, IS FURTHER AUTHORIZED TO INQUIRE INTO AND REPORT BACK TO THE BOARD ON ALL OUTSTANDING ISSUES.

DISSENT OF BOARD MEMBER H. F. IRWIN: JANUARY 22, 1971.

1. I DISSENT FROM THAT PART OF THE DECISION WHICH STATES THAT BARGAINING RIGHTS FOR THE CLASSIFICATIONS OF METER MAINTENANCE MEN, BY-LAW ENFORCEMENT OFFICERS, STREET SIGNS AND MARKING MAINTENANCE MEN AND CUSTODIANS, A TOTAL OF 10 EMPLOYEES, ARE NOT HELD BY STRATFORD CIVIC EMPLOYEES LOCAL UNION 197, CANADIAN UNION OF PUBLIC EMPLOYEES (HEREINAFTER REFERRED TO AS LOCAL UNION 197).

2. ON AUGUST 24TH, 1970, THE COUNCIL OF THE CITY OF STRATFORD ADOPTED A RESOLUTION VOLUNTARILY RECOGNIZING LOCAL UNION 197 AS THE BARGAINING AGENT OF THE 10 EMPLOYEES IN THE ABOVE CLASSIFICATIONS. SUCH RESOLUTIONS ARE NOT USUALLY ADOPTED BY COUNCIL EXCEPT ON THE REQUEST OF SOME PARTY. WHILE THERE IS NO DIRECT EVIDENCE AS TO WHO REQUESTED THE RESOLUTION CONFERRING THE BARGAINING RIGHTS REFERRED TO, IT IS REASONABLE TO ASSUME THAT IT WAS EITHER LOCAL UNION 197 OR THE NATIONAL UNION OF THE CANADIAN UNION OF PUBLIC EMPLOYEES. IN ANY EVENT, THE REPRESENTATIVE OF THE CANADIAN UNION OF PUBLIC EMPLOYEES, JOHN D. MURRAY, WROTE THE DEPUTY CITY CLERK ON SEPTEMBER 8, 1970, ACKNOWLEDGING RECEIPT OF A LETTER FROM THIS CIVIC OFFICIAL DATED AUGUST 24, 1970, ADVISING THAT COUNCIL ADOPTED THE RESOLUTION DATED AUGUST 24TH AND VOLUNTARILY RECOGNIZES THE CLASSIFICATIONS REFERRED TO BE IN THE BARGAINING UNIT OF LOCAL UNION 197 AND TO BE EFFECTIVE JANUARY 1, 1971. MR. MURRAY AGREED THE EFFECTIVE DATE OF THE INCLUSION OF THE ABOVE CLASSIFICATIONS WOULD BE JANUARY 1, 1971. HE THANKED THE DUPUTY CITY CLERK FOR "YOUR CO-OPERATION IN THIS MATTER." THE FILE REFERENCE CITED ON THE FACE OF MR. MURRAY'S LETTER IS "REF: L-197". SURELY THIS CAN ONLY MEAN STRATFORD CIVIC EMPLOYEES LOCAL UNION No. 197, CANADIAN UNION OF PUBLIC EMPLOYEES. THIS IS THE SAME JOHN D. MURRAY WHO SIGNED THE COLLECTIVE AGREEMENT DATED OCTOBER 31, 1969 BETWEEN LOCAL UNION 197 AND THE CITY OF STRATFORD ALONG WITH OFFICERS OF LOCAL UNION 197. THESE DOCUMENTS, TAKEN TOGETHER, CONSTITUTE A VALID AND BINDING AGREEMENT BETWEEN THE CITY OF STRATFORD AND LOCAL UNION 197, WITH THE SIGNED APPROVAL OF THE NATIONAL UNION. IT MAKES NO DIFFERENCE WHETHER JOHN D. MURRAY SIGNED AS THE AGENT OF LOCAL UNION 197 OR AS THE REPRESENTATIVE OF THE

NATIONAL UNION.

IN THE CIRCUMSTANCES, I WOULD HOLD THAT STRATFORD CIVIC EMPLOYEES' LOCAL UNION No. 197, CANADIAN UNION OF PUBLIC EMPLOYEES, IS THE BARGAINING AGENT FOR THE EMPLOYEES IN THE CLASSIFICATIONS REFERRED TO IN THE RESOLUTION ADOPTED BY COUNCIL ON AUGUST 24, 1970. WHILE THIS VOLUNTARY RECOGNITION IN WRITING CONFERRING THE SAID BARGAINING RIGHTS DOES NOT BAR THE PRESENT APPLICATION, IT MEANS THAT THIS BOARD CANNOT TERMINATE THOSE BARGAINING RIGHTS WITHOUT THE CONSENT OF THE EMPLOYEES CONCERNED OR ON SATISFACTORY EVIDENCE THAT A BONA FIDE TRANSFER OF JURISDICTION UNDER THE PROVISIONS OF SECTION 47 OF THE LABOUR RELATIONS ACT HAS TAKEN PLACE AND NAMED THE CANADIAN UNION OF PUBLIC EMPLOYEES AS THE SUCCESSOR TRADE UNION.

18743-70-R: SUDBURY TYPOGRAPHICAL UNION, No. 846 (APPLICANT) V. THE JOURNAL PRINTING COMPANY (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN AND BOARD MEMBERS P. J. O'KEEFFE AND J. E. C. ROBINSON, Q.C..

APPEARANCES AT THE HEARING: W. V. SASSO, A.W. SMITH AND J. DUFFY FOR THE APPLICANT; J. B. NOONAN AND H. HARING FOR THE RESPONDENT; R. T. GRANT AND N. TREMBLAY FOR THE GROUP OF EMPLOYEES.

DECISION OF VICE-CHAIRMAN FRANK V. BOSCARIOL AND BOARD MEMBER P. J. O'KEEFFE: JANUARY 6, 1971.

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2. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT SUDBURY, ENGAGED IN COMPOSING ROOM PRESSROOM, BINDERY AND LITHOGRAPHIC PROCESS WORK, SAVE AND EXCEPT NON-WORKING FOREMEN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

3. THERE WAS FILED WITH THE BOARD A STATEMENT OF DESIRE WHICH WAS SENT TO THE BOARD BY REGISTERED MAIL ON DECEMBER 9, 1970. THE APPLICANT WAS SO ADVISED BY THE DEPUTY REGISTRAR BY REGISTERED LETTER DATED DECEMBER 10, 1970, THE TERMINAL DATE SET FOR THIS APPLICATION.

4. THE REVISED LIST OF NAMES OF EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT FOR PURPOSES OF THE COUNT TOTALS 14. THE APPLICANT HAS SUBMITTED EVIDENCE OF MEMBERSHIP FOR 9 PERSONS, 8 OF WHICH CORRESPOND WITH THE NAMES APPEARING ON THE RESPONDENT'S REVISED LIST.

5. THE STATEMENT, WHICH EXPRESSES OPPOSITION TO THE APPLICATION, BEARS THE SIGNATURES OF 12 PERSONS PURPORTING TO BE EMPLOYEES OF THE RESPONDENT. OF THAT NUMBER, 5 ARE CLAIMED IN MEMBERSHIP BY THE APPLICANT. ACCORDINGLY, IF THE BOARD WERE TO GIVE WEIGHT TO THE STATEMENT, THE APPLICANT WOULD HAVE UNQUALIFIED EVIDENCE OF MEMBERSHIP FOR LESS THAN FIFTY-FIVE PER CENT OF THE PERSONS IN THE BARGAINING UNIT REQUIRED FOR OUTRIGHT CERTIFICATION. THE STATEMENT OF DESIRE THEREFORE IS RELEVANT IN THIS PROCEEDING.

6. BY TELEGRAM DATED DECEMBER 15, 1970, THE REGISTRAR ADVISED THE RESPONDENT THAT THE BOARD WAS IN RECEIPT OF A TELEGRAM FROM THE APPLICANT CHARGING THAT THE STATEMENT OF DESIRE WAS OBTAINED BY COERCION AND FRAUD. PARTICULARS IN SUPPORT THEREOF WERE RECEIVED BY THE BOARD BY REGISTERED LETTER DATED DECEMBER 16, 1970. COUNSEL FOR THE RESPONDENT WAS HANDED A COPY OF THIS LETTER JUST PRIOR TO THE HEARING OF THIS MATTER ON DECEMBER 17, 1970.

7. THE BOARD, UPON HEARING THE REPRESENTATIONS OF THE PARTIES, RESERVED ITS DECISION AS TO WHETHER THE BOARD SHOULD ENTERTAIN THE APPLICANT'S CHARGES HAVING REGARD TO THE TIME AT WHICH THEY WERE FILED.

8. THE FACTS OF THE INSTANT CASE BEAR SOME RESEMBLANCE TO THOSE IN THE NAVCO FOOD SERVICES LTD. CASE, OLRB M.R. NOVEMBER 1969, P. 979, INsofar AS IN BOTH CASES A PERIOD OF APPROXIMATELY ONE WEEK TRANSPIRED BETWEEN THE DATE OF OFFICIAL NOTIFICATION TO THE APPLICANT OF THE EXISTENCE OF THE STATEMENT OF DESIRE, TO THE DATE OF THE HEARING OF THE APPLICATION.

AT PAGE 981 OF THE ABOVE QUOTED CASE THE BOARD HELD:

"IN VIEW OF THE SHORT PERIOD OF TIME BETWEEN WHEN THE APPLICANT RECEIVED NOTICE FROM THE BOARD OF THE FILING OF THE STATEMENT OF DESIRE AND THE HEARING IN THIS MATTER, THE BOARD RULED THAT IT WAS PREPARED TO ENTERTAIN THE APPLICANT'S CHARGES....."

ACCORDINGLY, WE FIND THAT THE CHARGES ARE TIMELY.

9. THE REGISTRAR IS THEREFORE DIRECTED TO LIST THIS MATTER FOR CONTINUATION FOR HEARING AT SUDBURY TO ENABLE THE BOARD TO ENQUIRE INTO THE ORIGINATION, PREPARATION AND CIRCULATION OF THE STATEMENT OF DESIRE AND TO ENTERTAIN THE CHARGES FILED BY THE APPLICANT WITH RESPECT TO THE STATEMENT, AS WELL AS ALL OTHER OUTSTANDING ISSUES.

10. THE MATTER IS REFERRED TO THE REGISTRAR.

DECISION OF BOARD MEMBER J. E. C. ROBINSON, Q.C.: JANUARY 6, 1971.

WHILE I MUST CONCEDE THAT THE LAPSE OF TIME BEFORE FILING CHARGES BEARS A CLOSE RESEMBLANCE TO THE LAPSE OF TIME IN THE NAVCO FOOD SERVICES LTD. CASE, O.L.R.B. NOVEMBER 1969, P.979, I HAVE GREAT DIFFICULTY IN RECONCILING THE DECISIONS IN BOTH THIS CASE AND THE NAVCO CASE, WITH THE DECISIONS OF THE BOARD IN FLECK MANUFACTURING LIMITED CASE, 62 CLLC 1046, CLS 76-860 AND THE SEAWAY APPAREL LTD. CASE, O.L.R.B. MONTHLY REPORT, MAY 1967, P.145.

18789-70-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE ESSEX COUNTY BOARD OF EDUCATION (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS J. BELL AND O. HODGES.

APPEARANCES AT THE HEARING: W. A. ACTON AND PAUL SENAY FOR THE APPLICANT, R. E. BURNELL, W. WOOD AND A. D. LAW FOR THE RESPONDENT, LEONARD P. KAVANAUGH FOR THE OBJECTORS.

DECISION OF THE BOARD: JANUARY 4, 1971.

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3. THE APPLICANT APPLIED ON DECEMBER 10, 1970 TO BE CERTIFIED AS BARGAINING AGENT FOR ALL OFFICE EMPLOYEES OF THE RESPONDENT WITH CERTAIN EXCEPTIONS NOT HERE RELEVANT. THE RESPONDENT ALLEGED THAT THE APPLICATION WAS UNTIMELY BY REASON OF THE FACT THAT THE RESPONDENT HAD SIGNED AN AGREEMENT WITH "THE OFFICE EMPLOYEES OF THE ESSEX COUNTY BOARD OF EDUCATION" ON JUNE 29, 1970 AND THAT THIS AGREEMENT WAS A RENEWAL OF A PRIOR AGREEMENT WITH THE OFFICE EMPLOYEES. THE AGREEMENT STATES THAT IT WAS SIGNED ON BEHALF OF THE OFFICE EMPLOYEES OF THE RESPONDENT BY THE "SALARY COMMITTEE REPRESENTATIVES".

4. THE RESPONDENT WAS AFFORDED AN OPPORTUNITY TO FILE A COPY OF THE CONSTITUTION OR BY-LAWS OF "THE OFFICE EMPLOYEES OF THE ESSEX COUNTY BOARD OF EDUCATION" IN ORDER TO ESTABLISH THAT THERE WAS AN EMPLOYEES' ORGANIZATION WHICH WAS A VIABLE ENTITY WHICH COULD BE RECOGNIZED AS A TRADE UNION. HOWEVER, THE RESPONDENT ADVISED THE BOARD THAT IT HAD NO KNOWLEDGE OF THE STATUS OF THE OFFICE EMPLOYEES OF THE ESSEX COUNTY BOARD OF EDUCATION AND DID NOT KNOW WHETHER OFFICERS HAD BEEN ELECTED.

5. AN EMPLOYEE WHO HAD ACTED AS A MEMBER OF THE SALARY COMMITTEE WHICH HAD NEGOTIATED THE AGREEMENT DATED JUNE 29, 1970 TESTIFIED THAT SHE HAD NO KNOWLEDGE OF A CONSTITUTION OR BY-LAWS NOR DID SHE

HAVE ANY INFORMATION CONCERNING THE FORMAL EXISTENCE OF "THE OFFICE EMPLOYEES OF THE ESSEX COUNTY BOARD OF EDUCATION" AS AN ORGANIZATION.

6. FOR THE REASONS GIVEN IN THE PARKDALE WINES LIMITED CASE, OLRB MONTHLY REPORT, JULY 1970, P. 485, WE FIND THAT THE DOCUMENT DATED JUNE 29, 1970 WHICH WAS UPHELD BY THE RESPONDENT AS A COLLECTIVE AGREEMENT IS NOT A COLLECTIVE AGREEMENT WITHIN THE MEANING OF SECTION 1(1)(c) OF THE ACT. IN ORDER THAT A DOCUMENT MAY PROPERLY BE DESCRIBED AS A COLLECTIVE AGREEMENT UNDER THE ACT, IT MUST, AMONG OTHER THINGS, BE AN AGREEMENT IN WRITING BETWEEN AN EMPLOYER AND A TRADE UNION OR COUNCIL OF TRADE UNIONS. A TRADE UNION IS DEFINED BY SECTION 1(1)(j) AS AN ORGANIZATION OF EMPLOYEES "FORMED" FOR CERTAIN PURPOSES. SUCH AN ORGANIZATION MUST HAVE A FORMAL EXISTENCE WHICH MAY BE EVIDENCED BY A CONSTITUTION, BY-LAWS OR CHARTER. UNLESS THERE IS SOME DOCUMENTARY EVIDENCE OF ITS EXISTENCE AND UNLESS THERE ARE OFFICERS THROUGH WHOM THE ORGANIZATION CAN ACT, THERE IS NO VIABLE ENTITY WHICH CAN BE DEEMED TO BE A TRADE UNION WHICH COULD BE A PARTY TO A COLLECTIVE AGREEMENT WITHIN THE MEANING OF THE ACT. UNLESS A TRADE UNION OR COUNCIL OF TRADE UNIONS IS ONE OF THE PARTIES TO AN AGREEMENT, THE AGREEMENT CANNOT BE DESCRIBED AS A "COLLECTIVE AGREEMENT" UNDER THE ACT.

7. WE ACCORDINGLY FIND THAT THE DOCUMENT DATED JUNE 29, 1970 IS NOT A COLLECTIVE AGREEMENT WITHIN THE MEANING OF SECTION 1(1)(c) OF THE ACT AND IS THEREFORE NOT A BAR TO THIS APPLICATION.

8. THE BOARD FURTHER FINDS THAT ALL OFFICE EMPLOYEES OF THE RESPONDENT IN ESSEX COUNTY, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

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10. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

18806-70-R: OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA LOCAL UNION No. 124 (APPLICANT) V. DALACOUSTIC CONTRACTORS LIMITED (RESPONDENT).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

DECISION OF THE BOARD: JANUARY 5, 1971.

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7. THE RESPONDENT HAS RAISED THREE POINTS IN CONNECTION WITH THIS APPLICATION FOR CERTIFICATION. FIRSTLY, LOCAL 93 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA IS A PARTY TO A SUBSISTING COLLECTIVE AGREEMENT WITH THE RESPONDENT. SECONDLY, TAPERS WOULD BE USED BY THE RESPONDENT ON A JOB TO JOB BASIS ONLY AND THIS MAY HAPPEN ONCE OR TWICE IN A YEAR SINCE DRYWALL OR PLASTERING IS NOT ITS MAIN BUSINESS. THIRDLY, A PREVIOUS APPLICATION FILED BY THE APPLICANT WAS DISMISSED BY THE BOARD. THE BOARD NOTES THAT THE RESPONDENT HAS NOT REQUESTED A HEARING BY THE BOARD OF THIS APPLICATION FOR CERTIFICATION.

8. THE BOARD HAS EXAMINED THE COLLECTIVE AGREEMENT REFERRED TO ABOVE AND FINDS THAT THE SAID COLLECTIVE AGREEMENT DOES NOT COVER PERSONS DEFINED IN THE BARGAINING UNIT IN PARAGRAPH SIX. HENCE THE SAID COLLECTIVE AGREEMENT IS NOT A BAR TO THIS APPLICATION FOR CERTIFICATION. THE FACT THAT AN EMPLOYER IN THE CONSTRUCTION INDUSTRY MAY EMPLOY A PARTICULAR CRAFT OCCASIONALLY IN A FIELD WHICH IS NOT ITS MAIN BUSINESS HAS NOT BEEN HELD BY THE BOARD AS A GROUND FOR DENYING CERTIFICATION TO THE TRADE UNION INVOLVED. FINALLY, THE FACT THAT THE BOARD HAS PREVIOUSLY DISMISSED AN APPLICATION FOR CERTIFICATION INVOLVING THE SAME PARTIES IS NOT IN ITSELF A GROUND FOR REFUSING TO ENTERTAIN A SUBSEQUENT APPLICATION FOR CERTIFICATION.

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10. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

18848-70-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA
(APPLICANT) v. DUFFERIN MATERIALS AND CONSTRUCTION LTD. (RESPONDENT).
v. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 837
(INTERVENER).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS E. BOYER
AND R. W. TEAGLE.

DECISION OF THE BOARD: JANUARY 12, 1971.

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2. THE APPLICANT FILED EIGHT CERTIFICATES OF MEMBERSHIP. THE CERTIFICATES ARE SIGNED BY THE MEMBERS AND INDICATE THAT MONTHLY DUES OF \$11.50 HAVE BEEN PAID FOR AT LEAST ONE MONTH WITHIN THE SIX MONTH PERIOD IMMEDIATELY PRECEDING THE TERMINAL DATE OF THE APPLICATION. THE CERTIFICATES ARE CHECKED AND CERTIFIED CORRECT BY AN OFFICER OF THE APPLICANT. THE APPLICANT ALSO FILED A DULY COMPLETED FORM 54, DECLARATION CONCERNING MEMBERSHIP DOCUMENTS, CONSTRUCTION INDUSTRY.

3. THE RESPONDENT FILED A REPLY, A LIST OF EMPLOYEES CONTAINING EIGHT NAMES AND SPECIMEN SIGNATURES WITHIN THE TIME FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

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5. THE BOARD FURTHER FINDS THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 92 OF THE LABOUR RELATIONS ACT.

6. IN PARAGRAPH FIVE OF ITS APPLICATION FOR CERTIFICATION, CONSTRUCTION INDUSTRY, THE APPLICANT INDICATED THAT THE NATURE OF THE WORK PERFORMED BY THE EMPLOYEES IN THE PROPOSED BARGAINING UNIT CONSISTED OF GENERAL CONSTRUCTION WORK AND CONSTRUCTION OF ALL FORMS FOR CONCRETE FORMWORK, INCLUDING THE SETTING AND DISMANTLING OF ALL FORMS AND ACCESSORIES. IN ITS INTERVENTION, CONSTRUCTION INDUSTRY, THE INTERVENER RECITES THE FACT THAT IT WAS GRANTED CERTIFICATION BY THE BOARD FOR ALL CONSTRUCTION LABOURERS SAVE AND EXCEPT NON-WORKING FOREMEN AND THOSE ABOVE THAT RANK. THE INTERVENER HAS NOT REQUESTED A HEARING OF THE APPLICATION BY THE BOARD BUT HAS STATED IN PARAGRAPH 4(2) OF ITS INTERVENTION:

THE INTERVENER DOES NOT OBJECT
TO THE APPLICATION FOR CERTI-
FICATION BUT DOES OBJECTS(SIC)

CARPENTERS CLAIM ON PARAGRAPH 5, PAGE 1, SINCE THE DISEMAN-
TLING(SIC) OF ALL FORMS AND
ACCESSORIES IS THE WORK OF
LABOURERS.

7. THE APPLICANT IS NOT CLAIMING JURISDICTION OVER THE WORK MENTIONED IN PARAGRAPH FIVE OF ITS APPLICATION FOR CERTIFICATION, BUT IS MERELY STATING THE NATURE OF THE WORK PERFORMED FOR INFORMATIONAL PURPOSES. AS THE BOARD STATED IN THE DALACOUSTIC CONTRACTORS LIMITED CASE, OLRB MONTHLY REPORTS, APRIL 1965, P.28:

IT HAS NOT BEEN THE RECENT POLICY OF THE BOARD TO DESCRIBE BARGAINING UNITS IN TERMS OF WORK TO BE PERFORMED BY THE EMPLOYEES IN THE BARGAINING UNIT AND, IN FACT, IN DEALING WITH CARPENTERS' CASES THE POLICY OVER MANY YEARS HAS BEEN TO REFER SIMPLY TO CARPENTERS AND CARPENTERS' APPRENTICES. IN OTHER WORDS THE BOARD HAS TAKEN THE POSITION THAT IT IS NOT THE FUNCTION OF THE BOARD TO DEFINE OR DELIMIT THE TRADE JURISDICTION OF THE VARIOUS CRAFT UNIONS UNLESS THERE ARISES IN A PARTICULAR CASE A QUESTION OF CONFLICT OF BARGAINING RIGHTS. SUCH A CONFLICT HAS NOT ARISEN IN THE PRESENT CASE AND THE BOARD DOES NOT INTEND TO DEPART FROM ITS USUAL PRACTICE.

IN THE PRESENT APPLICATION FOR CERTIFICATION THE INTERVENER IS NOT OPPOSING THE APPLICANT'S REQUEST FOR CERTIFICATION, BUT IS RATHER OPPOSING WHAT IT INTERPRETS AS A POSSIBLE JURISDICTIONAL DISPUTE BETWEEN ITSELF AND THE APPLICANT. IN THIS REGARD, THE ATTENTION OF THE PARTIES IS DIRECTED TO SECTION 66 OF THE LABOUR RELATIONS ACT.

8. THE APPLICANT HAS PROPOSED AN APPROPRIATE BARGAINING UNIT IN THE GEOGRAPHIC AREA OF THE REGIONAL MUNICIPALITY OF NIAGARA AND THE COUNTY OF HALDIMAND. THE RESPONDENT HAS STATED THAT THE AREA PROPOSED BY THE APPLICANT IS NOT IN ACCORDANCE WITH BOARD AREA No. 5. ON JANUARY 1, 1970, THE REGIONAL MUNICIPALITY OF NIAGARA ACT, 1968-69, PROVIDED FOR THE INCORPORATION OF THE REGIONAL MUNICIPALITY OF NIAGARA AND FOR THE DISSOLUTION OF THE COUNTIES OF LINCOLN AND WELLAND. THE AREA FORMERLY COVERED BY THE COUNTIES OF LINCOLN AND WELLAND IS NOW COVERED BY THE REGIONAL MUNICIPALITY OF NIAGARA. REFERENCE IS MADE

TO THE STEED AND EVANS CASE, OLRB, M.R. APRIL 1970, P.64.

9. HAVING REGARD TO THE FOREGOING, THE BOARD FURTHER FINDS THAT ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN THE REGIONAL MUNICIPALITY OF NIAGARA AND THE COUNTY OF HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

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11. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

18631-70-R: GEORGETTE ROBICHAUD (APPLICANT) V. HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION A.F.L. - C.L.C. LOCAL 197 (RESPONDENT) WENTWORTH ARMS HOTEL LIMITED (INTERVENER).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS H.F. IRWIN AND P.J. O'KEEFE.

APPEARANCES AT THE HEARING: W.M. SCHREIBER, Q.C., FOR THE APPLICANT; W.A. ADAMS AND W. KOWALCHUK FOR THE RESPONDENT; E.L. STRINGER AND M. CHELAR FOR THE INTERVENER.

DECISION OF THE BOARD: JANUARY 20, 1971.

1. THIS IS AN APPLICATION FOR TERMINATION PURSUANT TO SECTION 43 OF THE LABOUR RELATIONS ACT. THE EMPLOYEES FILED A STATEMENT OF DESIRE DECLARING THAT THEY DID NOT WANT THE RESPONDENT TRADE UNION TO BE THEIR BARGAINING AGENT. ACCORDINGLY, AT THE HEARING AND PURSUANT TO ITS USUAL PRACTICE THE BOARD INQUIRED INTO THE ORIGINATION AND CIRCULATION OF THE STATEMENT OF DESIRE.

2. MRS. GEORGETTE ROBICHAUD, WHO IS THE NAMED APPLICANT, TESTIFIED AS TO THE ORIGINATION OF THE STATEMENT OF DESIRE. SHE STATED THAT MR. RICHARD GUTCHER, ANOTHER EMPLOYEE, WENT TO SEE A LAWYER AND SUBSEQUENTLY BROUGHT THE STATEMENT TO WORK FOR THE EMPLOYEES TO SIGN. AFTER HE BROUGHT THE DOCUMENT MR. GUTCHER LEFT, INDICATING TO MRS. ROBICHAUD THAT HE WAS QUITTING AND MRS. ROBICHAUD DID NOT SEE HIM AGAIN. SHE TOOK IT UPON HERSELF TO SPEAK TO THE LAWYER THAT MR. GUTCHER HAD SEEN. THE STATEMENT OF DESIRE WAS NOT PREPARED BY MRS. ROBICHAUD NOR WAS SHE THE ONE WHO INSTRUCTED THE LAWYER TO PREPARE THE STATEMENT OF DESIRE. SHE TESTIFIED THAT THE INSTIGATOR OF THE DOCUMENT WAS MR. GUTCHER. MISS ERIN GERAGHTY, ANOTHER EMPLOYEE, TESTIFIED THAT SHE SIGNED THE DOCUMENT IN QUESTION AND THAT IT WAS GIVEN TO HER BY MR. GUTCHER. HER EVIDENCE IN THAT RESPECT CONTRADICTS THE EVIDENCE OF MRS. ROBICHAUD WHO STATED THAT SHE WAS THE ONE WHO OBTAINED THE SIGNATURES OF ALL THE EMPLOYEES.

3. AFTER THE APPLICANT'S CASE WAS COMPLETED THE BOARD INQUIRED WHETHER THERE WAS ANY EVIDENCE THAT THE INTERVENER WISHED TO ADDUCE AND THE INTERVENER THEN PROCEEDED TO CALL MR. RICHARD GUTCHER. MR. GUTCHER TESTIFIED THAT HE WAS ASSISTED IN PREPARING THE DOCUMENT BY MR. CHELAR, WHO ATTENDED AT THE HEARING ON BEHALF OF THE EMPLOYER. IT APPEARS THAT MR. CHELAR IS THE PERSON WHO CONTROLS AND DIRECTS THE INTERVENER COMPANY. MR. GUTCHER TESTIFIED THAT MR. CHELAR HAD BEEN AFTER HIM FOR SOME TIME TO ATTEMPT TO TERMINATE THE BARGAINING RIGHTS OF THE UNION. MR. GUTCHER SUBSEQUENTLY ATTENDED AT THE OFFICE OF A LAWYER WITH MR. CHELAR. MR. GUTCHER DID NOT MAKE THE APPOINTMENT; HE HAD NOT PREVIOUSLY DEALT WITH THIS LAWYER; NOR DID HE MAKE ARRANGEMENTS TO PAY THE LAWYER'S FEE. BOTH MR. GUTCHER AND MR. CHELAR REMAINED IN THE LAWYER'S OFFICE AND DISCUSSED THIS MATTER WITH THE LAWYER, WHO SUBSEQUENTLY PREPARED THE DOCUMENT, WHICH IT IS NOW SUBMITTED REFLECTS THE VOLUNTARY WISHES OF THE EMPLOYEES. THE STATEMENT OF DESIRE WAS DELIVERED TO MR. GUTCHER AT HIS PLACE OF EMPLOYMENT; MR. CHELAR ASKED MR. GUTCHER IF HE HAD RECEIVED THE DOCUMENT AND MR. GUTCHER REPLIED IN THE AFFIRMATIVE. SUBSEQUENTLY, MR. GUTCHER WAS CONTACTED ON THE TELEPHONE BY A MR. BIRD, WHO IS A FOREMAN OR SUPERVISOR OF THE INTERVENER, AND WAS ASKED TO COME TO THE HOTEL AND TAKEN INTO A PRIVATE OFFICE AND REQUESTED TO SIGN THE STATEMENT OF DESIRE. MR. GUTCHER REFUSED.

4. THE CONDUCT OF THE EMPLOYER IN THIS CASE WAS SUCH THAT THE APPLICATION, IN FACT, WAS THE APPLICATION BY THE EMPLOYER AND NOT THE EMPLOYEES. THE APPLICATION ORIGINATED AND WAS DIRECTED AND CONTROLLED BY MR. CHELAR. FROM THE EVIDENCE WE ARE OF THE OPINION THAT THE EMPLOYEES MERELY BECAME A "FRONT" FOR THE EMPLOYER'S UNLAWFUL ACTIVITY IN WHAT COULD ONLY BE CONSIDERED TO BE A DELIBERATE ATTEMPT TO DECEIVE THE EMPLOYEES, THEIR BARGAINING AGENT AND THIS BOARD.

5. IT WAS SUBMITTED THAT NOTWITHSTANDING THE ACTIONS OF THE EMPLOYER THAT THE DOCUMENT REFLECTS THE VOLUNTARY EXPRESSION OF THE TRUE WISHES OF THE EMPLOYEES. WE REJECT THAT SUBMISSION AND ADOPT THE REASONS IN REMINGTON RAND LIMITED, BETWEEN HERBERT C. RICE AND THE INTERNATIONAL UNION OF ELECTRICAL RADIO AND MACHINE WORKERS, C.I.O.-CCL LOCAL 543, CCH CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER, 1955 TO 1959, PARA. 16,055, WHICH ARE AS FOLLOWS:

"IT IS CLEAR, ON THE UNCONTRADICTED TESTIMONY OF THE APPLICANT HIMSELF, THAT THE MOVING SPIRIT IN THE INITIATION OF THIS APPLICATION WAS NOT RICE OR ANY OF THE OTHER EMPLOYEES BUT SANDILANDS, A MEMBER OF MANAGEMENT. THE HAND OF MANAGEMENT IS ALSO EVIDENT IN THE LEeway WHICH MUST OBVIOUSLY HAVE BEEN GIVEN TO RICE TO CIRCULATE THE PETITION AS WELL AS IN THE STEPS TAKEN BY MANAGEMENT TO ENSURE THAT RICE WOULD BE ADEQUATELY REPRESENTED

AT THE HEARING. RICE HAD NO INTENTION OF APPLYING TO THE BOARD FOR TERMINATION OF THE UNION'S BARGAINING RIGHTS WHEN HE APPROACHED SANDILANDS FOR ADVICE. HE ASKED FOR ADVICE ON PROPER PROCEDURE TO BE FOLLOWED IN CONNECTION WITH THE EXERCISE OF HIS RIGHTS UNDER THE COLLECTIVE AGREEMENT AND MANAGEMENT TOOK ADVANTAGE OF THE SITUATION TO PRESS HIM INTO TAKING ACTION OF AN ENTIRELY DIFFERENT SORT. HE FOUND HIMSELF A PRISONER OF CIRCUMSTANCE; A COURSE WAS CHARTERED FOR HIM BY SANDILANDS, AND HE WAS NO LONGER A FREE AGENT. WHETHER THE EMPLOYEES WHO SIGNED THE DOCUMENTS SUPPORTING THE APPLICATION KNEW OR DID NOT KNOW THE ROLE THAT SANDILANDS PLAYED IN THE WHOLE AFFAIR IS BESIDE THE POINT. IT IS INCONCEIVABLE TO US THAT THE LEGISLATURE INTENDED THAT A DOCUMENT CREATED AND CIRCULATED BY MANAGEMENT ITSELF SHOULD BE HELD TO SATISFY THE PROVISIONS OF SECTION 41, AND MAKE IT INCUMBENT ON THE BOARD TO DIRECT THAT A REPRESENTATION VOTE BE HELD, EVEN THOUGH IT IS SUPPORTED BY THE SIGNATURES OF A SUFFICIENT NUMBER OF EMPLOYEES. IN THE INSTANT CASE MANAGEMENT ACCOMPLISHED ITS PURPOSE THROUGH AN EMPLOYEE WHO IN THE CIRCUMSTANCES OF THIS CASE, CAN ONLY BE REGARDED AS AN ALTER EGO FOR MANAGEMENT. IF WE WERE TO TREAT THE DOCUMENT FILED IN SUPPORT OF THIS APPLICATION AS MEETING THE REQUIREMENTS OF SECTION 41, WE WOULD BE SAYING THAT AN EMPLOYER CAN DO INDIRECTLY WHAT HE CANNOT DO DIRECTLY."

6. THERE WAS A FURTHER ISSUE THAT AROSE IN THIS CASE AS TO WHETHER COUNSEL FOR THE APPLICANT (THE LAWYER WHO PREPARED THE STATEMENT OF DESIRE WAS NOT AT THE HEARING) SHOULD HAVE A RIGHT TO CROSS-EXAMINE MR. GUTCHER WHO WAS CALLED BY THE INTERVENER COMPANY. COUNSEL FOR THE APPLICANT WAS PERMITTED BY THE BOARD TO PUT QUESTIONS TO MR. GUTCHER BUT THROUGH THE BOARD. COUNSEL INDICATED THAT HE DID NOT CONTEST THE FACTS AS TO THE INVOLVEMENT OF MR. CHELAR IN THIS APPLICATION, BUT WISHED TO CROSS-EXAMINE WITH RESPECT TO THE VOLUNTARY WISHES OF THE EMPLOYEES. WE ARE OF THE OPINION THAT THE DECISION IN THE REMINGTON RAND LIMITED CASE IS SUFFICIENT TO DISPOSE OF THAT ISSUE. WE DENIED COUNSEL THE RIGHT TO CROSS-EXAMINE AND WE AFFIRM OUR RULING MADE AT THE HEARING BECAUSE WE ARE OF THE OPINION THAT IN THE CIRCUMSTANCES OF THIS CASE CROSS-EXAMINATION SHOULD NOT BE PERMITTED BECAUSE THE INTERESTS OF THE INTERVENER EMPLOYER AND THE APPLICANT ARE EITHER IDENTICAL OR SUBSTANTIALLY THE SAME. SEE FROBISHER LTD. V. CANADIAN PIPELINES & PETROLEUMS LTD. ET AL., 10 D.L.R. (2D) 338 AT 365 (SASK. CT. APP.).

7. THE BOARD WISHES TO AFFIRM THAT MR. STRINGER WHO APPEARED AS COUNSEL FOR THE INTERVENER COMPANY WAS NOT THE LAWYER WHO PREPARED THE STATEMENT OF DESIRE NOR IS THERE ANY INDICATION OF IMPROPRIETY ON HIS PART. MR. STRINGER HAS INDICATED THAT HE CALLED MR. GUTCHER TO PLACE ALL THE RELEVANT FACTS BEFORE THE BOARD. APART FROM MR. STRINGER'S SUBMISSION WE WISH TO COMMENT THAT THE ONLY EVIDENTIARY PURPOSE OF MR. GUTCHER'S EVIDENCE WOULD HAVE BEEN TO CLOSE THE GAP IN THE APPLICANT'S CASE RESULTING FROM THE OMISSION BY THE APPLICANT TO ADDUCE EVIDENCE WITH RESPECT TO THE PERSON WHO ORIGINATED OR INSTIGATED THE STATEMENT OF DESIRE. SEE E.G. MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA V. MARSH FROZEN FOODS LIMITED V. GROUP OF EMPLOYEES, SEPTEMBER 1970, OLRB, MTHLY. REP., 649. AN INTERVENER COMPANY COULD NOT COMBINE WITH APPLICANT EMPLOYEES FOR THE PURPOSE OF MAKING A CASE ON BEHALF OF THE APPLICANT EMPLOYEES. THIS IS NOT A DUAL APPLICATION OR A COMBINED APPLICATION, BUT IS AN APPLICATION BY EMPLOYEES AND THEY ARE REQUIRED TO MAKE THEIR OWN CASE. THAT IS NOT TO SAY THAT IN CERTAIN CIRCUMSTANCES AN INTERVENER MAY NOT ADDUCE EVIDENCE, BUT NOT FOR THE PURPOSE OF COMPLETING THE APPLICANT'S CASE.

8. FOR ALL THESE REASONS THE APPLICATION IS DISMISSED, AND IN VIEW OF THE DISPOSITION OF THE APPLICATION IT WILL NOT BE NECESSARY TO INQUIRE INTO THE CHARGES MADE BY THE TRADE UNION AGAINST THE EMPLOYER AND THE LAWYER CONCERNED FOR ALLEGEDLY BREACHING THE LABOUR RELATIONS ACT.

18835-70-R: GEORGE CHASE (APPLICANT) V. HOTEL & RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION LOCAL 197 (RESPONDENT).

(RE: BRITANNIA PUBLIC HOUSE,
HAMILTON, ONTARIO).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS J. BELL AND P. J. O'KEEFFE.

APPEARANCES AT THE HEARING: G. CHASE AND R. SILLIKER FOR THE APPLICANT, NO ONE FOR THE RESPONDENT.

DECISION OF THE BOARD: JANUARY 12, 1971.

1. THIS IS AN APPLICATION MADE UNDER SECTION 43 OF THE LABOUR RELATIONS ACT FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT.

2. THE RESPONDENT AND THE BRITANNIA PUBLIC HOUSE ARE PARTIES

TO A COLLECTIVE AGREEMENT FILED WITH THE BOARD WHICH EXPIRES ON FEBRUARY 12, 1971. THE SCOPE CLAUSE PROVIDES THAT THE AGREEMENT APPLIES TO "ALL EMPLOYEES OF THE COMPANY IN BEVERAGE ROOMS AND COCKTAIL LOUNGES AND DINING LOUNGES IN THE FOLLOWING CATEGORIES OF EMPLOYMENT: TAPMEN, BARTENDERS, WAITERS, BARBOYS AND/OR IMPROVERS. PART-TIME HELP SHALL RECEIVE NO BENEFITS (EXCEPT RATE OF PAY AS PROVIDED IN SCHEDULE C)." THE BOARD WAS ADVISED BY THE APPLICANT AT THE HEARING THAT THE PERSON EMPLOYED IN THE CAPACITY OF BARTENDER WAS THE OWNER AND MANAGER OF THE BRITANNIA PUBLIC HOUSE AND THAT THE TAPMAN WAS THE ASSISTANT MANAGER AND THAT BOTH MEMBERS OF MANAGEMENT WERE NOT INCLUDED IN THE BARGAINING UNIT. THE APPLICANT ALSO ADVISED THE BOARD AT THE HEARING THAT AS OF THE DATE OF THE MAKING OF THE APPLICATION THE BRITANNIA PUBLIC HOUSE ONLY HAD WAITERS IN ITS EMPLOY AND THAT THERE WERE NO PERSONS IN THE CLASSIFICATIONS OF BARBOYS AND/OR IMPROVERS. IN VIEW OF THE FACT THAT PART-TIME EMPLOYEES ARE PAID THE WAGE RATE SET OUT IN THE COLLECTIVE AGREEMENT, THE BOARD FINDS THAT EMPLOYEES IN THIS CLASSIFICATION ARE INCLUDED IN THE BARGAINING UNIT.

. . .

4. THE BOARD DIRECTS THAT A REPRESENTATION VOTE BE TAKEN OF THE EMPLOYEES OF THE BRITANNIA PUBLIC HOUSE. THOSE ELIGIBLE TO VOTE ARE ALL EMPLOYEES OF THE BRITANNIA PUBLIC HOUSE AT HAMILTON EMPLOYED IN ITS BEVERAGE ROOMS AND COCKTAIL LOUNGES AND DINING LOUNGES IN THE CLASSIFICATIONS OF BARTENDERS, TAPMEN, WAITERS, BARBOYS AND/OR IMPROVERS ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN.

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6. THE MATTER IS REFERRED TO THE REGISTRAR.

18809-70-U: THE FOUNDATION COMPANY OF CANADA LIMITED AND A. D. ROSS & COMPANY LIMITED (APPLICANTS) V. JOHN HURTUBISE, DOSITHEE BOUTHILLETTE, ALEX HOEKSMAN, GARY SCHMID, HAROLD O'GORMAN, MARCEL FONTAINE (RESPONDENTS).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN, AND BOARD MEMBERS J. BELL AND E. BOYER.

APPEARANCES AT THE HEARING: E. HOREMBALA, P. ANGUS, L. E. ANNIS AND D. MCCORMICK FOR THE APPLICANTS; R. KOSKIE FOR ALL OF THE RESPONDENTS EXCEPT DOSITHEE BOUTHILLETTE.

DECISION OF THE BOARD: JANUARY 6, 1971.

1. THIS IS AN APPLICATION FOR CONSENT TO PROSECUTE THE SIX NAMED RESPONDENTS FOR ENGAGING IN A STRIKE CONTRARY TO THE PROVISIONS OF SECTION 54(1) OF THE LABOUR RELATIONS ACT.

2. THERE WAS DISAGREEMENT BETWEEN THE PARTIES ON WHETHER THE APPLICANTS COULD PROPERLY MAKE THE PRESENT APPLICATION. IT WAS AGREED BY THE PARTIES THAT ASSUMING THE ALLEGED BEHAVIOUR OF THE RESPONDENTS CONSTITUTED A STRIKE WITHIN THE MEANING OF SECTION 1(1)(1) OF THE LABOUR RELATIONS ACT THAT THERE WAS NO HISTORY OF SIMILAR OCCURRENCES, THE STRIKE LASTED FOR APPROXIMATELY FOUR HOURS, THE EMPLOYMENT OF THE SIX RESPONDENTS WAS TERMINATED TWO DAYS AFTER THE STRIKE AND THAT THERE WAS NO VIOLENCE ACCOMPANYING THE STRIKE.

3. IN THE CIRCUMSTANCES OF THIS CASE, AND ASSUMING WITHOUT DECIDING THAT THE APPLICANTS MAY PROPERLY MAKE THIS APPLICATION, THE BOARD IS OF THE OPINION THAT NO USEFUL PURPOSE WOULD BE SERVED IN THE GRANTING OF ITS CONSENT TO INSTITUTE A PROSECUTION AGAINST THE RESPONDENTS. REFERENCE IS MADE TO THE CANAL CARTAGE LIMITED CASE, OLRB MONTHLY REPORT, OCTOBER 1961, P. 251.

4. THIS APPLICATION IS ACCORDINGLY DISMISSED.

18468-70-U: FRANK AUCIELLO (COMPLAINANT) V. WESTON BAKERIES LIMITED (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS P. J. O'KEEFFE AND J. E. C. ROBINSON, Q.C..

APPEARANCES AT THE HEARING: DAVID WALFISH, Q.C. FOR THE COMPLAINANT AND I. H. MCGOWAN FOR THE RESPONDENT.

DECISION OF THE BOARD: JANUARY 28, 1971.

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2. THIS IS A COMPLAINT UNDER SECTION 65 OF THE LABOUR RELATIONS ACT IN WHICH THE COMPLAINANT ALLEGES THAT HE HAS BEEN DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 50 OF THE LABOUR RELATIONS ACT IN THAT HE WAS DISCHARGED WITHOUT CAUSE. THE COMPLAINANT REQUESTED THAT HE BE REINSTATED AND COMPENSATED FOR LOSS OF WAGES.

3. DURING THE PROCEEDINGS COUNSEL FOR THE COMPLAINANT REQUESTED AN ADJOURNMENT OF THE HEARING BECAUSE CERTAIN WITNESSES WHO WERE TO TESTIFY ON BEHALF OF THE COMPLAINANT DID NOT APPEAR. IN RESPONSE TO A QUESTION PUT BY THE BOARD, COUNSEL FOR THE COMPLAINANT ADVISED THE BOARD THAT THE WITNESSES HAD BEEN SERVED WITH SUBPOENAS AND WITH THREE DOLLARS CONDUCT MONEY EACH. IN SUCH CIRCUMSTANCES, UPON PROOF OF

SERVICE AND PAYMENT OF CONDUCT MONEY, THE BOARD NORMALLY WILL GRANT AN ADJOURNMENT.

4. THE BOARD INQUIRED AS TO WHETHER THE COMPLAINANT COULD ESTABLISH PROOF OF SERVICE AND COUNSEL REPLIED THAT THE COMPLAINANT HAD SERVED THE SUBPOENAS HIMSELF. THE COMPLAINANT WAS CALLED TO THE BOX AND SWORE THAT HE HAD SERVED SUBPOENAS ON MARIO MAIDA, SAM TOMASO AND HAZEL BENNETT. WHEN ASKED BY THE BOARD TO PRODUCE THE ORIGINAL SUBPOENA, COUNSEL STATED THAT THE ORIGINAL SUBPOENAS HAD BEEN SERVED ON THE PROSPECTIVE WITNESSES.

5. THE FORM OF SUBPOENA SERVED ON MARIO MAIDA AND PURPORTING TO BE THE ORIGINAL SUBPOENA WAS THEN PRODUCED TO THE BOARD AND WAS IN THE FOLLOWING FORM:

"FILE 18468/70 U

SUBPOENA:

THE LABOUR RELATIONS ACT

B E T W E E N:

FRANK AUCIELLO,

COMPLAINANT,

AND

WESTON BAKERY,

RESPONDENT.

ELIZABETH THE SECOND, BY THE GRACE OF GOD OF THE
UNITED KINGDOM, CANADA AND HER OTHER REALMS AND
TERRITORIES, QUEEN, HEAD OF THE COMMONWEALTH,
DEFENDER OF THE FAITH:

TO:

MARIO MAIDA,
36, ST. CLAIR GARDENS.
TORONTO.

GREETINGS:

WE COMMAND YOU TO ATTEND BEFORE THE
LABOUR RELATIONS BOARD, 8 YORK STREET, TORONTO,
ON THURSDAY THE 14TH DAY OF JANUARY 1971, AT THE
HOUR OF 9.15 O'CLOCK IN THE AFTERNOON AND SO FROM
DAY TO DAY UNTIL THE ABOVE MATTER HAS BEEN HEARD.

WITNESS HIS HONOUR JUDGE I. MACRAE.

DATED 11TH JANUARY 1971.

"J. H. KENNEDY"

CLERK."

6. COUNSEL FOR THE RESPONDENT TOOK THE POSITION THAT THIS WAS NOT AN EFFECTIVE SUBPOENA AND THAT THE ADJOURNMENT SHOULD NOT BE GRANTED. THE BOARD RECESSED TO CONSIDER THE MOTION FOR ADJOURNMENT.

7. HAVING CONSIDERED THE SUBMISSION OF COUNSEL FOR BOTH PARTIES AND HAVING EXAMINED WHAT PURPORTED TO BE THE ORIGINAL SUBPOENA, THE BOARD CONCLUDED THAT THE DOCUMENT WAS NOT AN ORIGINAL AND FURTHERMORE DID NOT CONSTITUTE AN EFFECTIVE SUBPOENA. WHILE THE "SUBPOENA" PURPORTED, BY REASON OF ITS HEADING, TO BE ISSUED UNDER THE LABOUR RELATIONS ACT, IT WAS NOT IN FACT A DOCUMENT ISSUED BY OR UNDER THE PROVISIONS OF THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE. IT IS OBVIOUS THAT COUNSEL FOR THE COMPLAINANT KNEW OR OUGHT TO HAVE KNOWN THAT THE ALLEGED SUBPOENA WAS, TO SAY THE LEAST, DEFECTIVE IN FORM AND DEVOID OF POWER. THE BOARD ADVISED THE PARTIES THAT IT WAS THE RESPONSIBILITY OF THE COMPLAINANT TO TAKE THE PROPER STEPS TO SEE THAT HIS WITNESSES WERE AT THE HEARING AND THE MOTION FOR ADJOURNMENT WAS DENIED.

8. EVIDENCE ON BEHALF OF THE COMPLAINANT WAS GIVEN BY VITA AUCIELLO, A NEPHEW OF THE COMPLAINANT. HE HAD BEEN AN EMPLOYEE OF THE RESPONDENT COMPANY FROM ABOUT JUNE OF 1968 UNTIL SEPTEMBER OF 1970. HIS TESTIMONY CONCERNED HIS RELATIONSHIP AND THAT OF THE COMPLAINANT WITH MARIO MAIDA WHO WAS FOREMAN AT THE TIME OF THE COMPLAINANT'S DISMISSAL. THE BULK OF THE WITNESS'S TESTIMONY REFERRED TO HIS OWN RELATIONSHIP WITH MAIDA BEFORE THE LATTER BECAME FOREMAN AND INDICATED THAT MAIDA WAS INCLINED TO BULLY THE WITNESS. HE TESTIFIED, HOWEVER, THAT MAIDA AND THE COMPLAINANT WERE ON FRIENDLY TERMS. THE EVIDENCE MADE NO REFERENCE TO ANYTHING IN THE NATURE OF

UNION ACTIVITY ON THE PART OF EITHER OF THE AUCIELLOS NOR DID IT DISCLOSE ANYTHING WHATSOEVER WITH RESPECT TO MAIDA'S ATTITUDE TOWARD THE UNION.

9. THE COMPLAINANT CALLED MARIO MAIDA. HE TESTIFIED THAT HE HAD BEEN PROMOTED TO FOREMAN ABOUT A YEAR AND A HALF PREVIOUS TO THE DATE OF THE HEARING AND THAT THE COMPLAINANT HAD WORKED FOR HIM. HIS EVIDENCE WAS THAT HE WAS NOT SATISFIED WITH THE WORK PERFORMANCE OF THE COMPLAINANT AT THE TIME OF THE DISMISSAL. THE WITNESS STATED THAT HE KNEW THAT THE COMPLAINANT WAS A UNION STEWARD, BUT WAS NOT AWARE OF WHAT HIS DUTIES WERE. HE STATED THAT HE HAD NEVER DEALT WITH AUCIELLO IN THE LATTER'S CAPACITY AS UNION STEWARD. HE STATED THAT HE HAD NEVER SPOKEN TO AUCIELLO ABOUT THE UNION OR CONCERNING THE COMPLAINANT'S UNION ACTIVITIES.

10. THE COMPLAINANT TESTIFIED UPON HIS OWN BEHALF. HE WAS EMPLOYED BY THE RESPONDENT FOR APPROXIMATELY TEN YEARS. IN 1968 HE WAS ELECTED STEWARD IN THE UNION. HE DESCRIBED MAIDA, BEFORE HE BECAME FOREMAN, AS A "BIG MOUTH SHOW OFF" WHO TOOK DELIGHT IN USING HIS MUSCLE TO PUSH PEOPLE AROUND. THE WITNESS SAID THAT MAIDA'S CONDUCT WAS THE SAME AFTER HE BECAME FOREMAN. THE WITNESS TESTIFIED AT CONSIDERABLE LENGTH AND REVIEWED THE HISTORY OF HIS RELATIONSHIP WITH MAIDA FOLLOWING THE LATTER'S PROMOTION TO FOREMAN. IT IS QUITE CLEAR THAT THERE WAS A CONTINUOUS FEUD BETWEEN THESE TWO PERSONS. IT ALSO APPEARED THAT THE COMPLAINANT HAD DIFFICULTIES WITH TWO OTHER FOREMEN. THE WITNESS STATED THAT IN ONE WAY OR ANOTHER, ALL THREE FOREMEN HATED HIM. IT WAS HIS OPINION THAT THIS HATE STARTED AFTER HE BECAME A UNION STEWARD. HE ALSO ATTRIBUTED IT TO THE FACT THAT THE COMPANY BLAMED HIM FOR CALLING A STRIKE WHILE A MEMBER OF A NEGOTIATION COMMITTEE.

11. THE WITNESS WAS DISCIPLINED ON SEVERAL OCCASIONS AND FILED GRIEVANCES ON SOME OF THESE MATTERS. AT NO TIME, HOWEVER, DO THE GRIEVANCES DIRECTLY ALLEGE DISCRIMINATION BECAUSE OF UNION ACTIVITY. THE CLOSEST ANY GRIEVANCE COMES TO ALLEGING DISCRIMINATION IS ONE COMPRISING A TWO PAGE LETTER OF COMPLAINT DATED OCTOBER 3, 1969 WHICH CONCLUDES WITH THE FOLLOWING PARAGRAPH:

"I FEEL ABUSED AND MISTREATED BY THE COMPANY AND THEIR MANAGEMENT, AND I WONDER IF IT IS BECAUSE I AM A UNION STEWARD AND HELP PEOPLE WITH THEIR GRIEVANCES, OR A PERSONAL HATE WHICH I CAN'T EXPLAIN."

THE POINT DOES NOT APPEAR TO HAVE BEEN PURSUED BY THE UNION WHOSE OFFICER THE COMPLAINANT WAS.

12. THE RESPONDENT CALLED NO EVIDENCE.

13. IN COMPLAINTS BROUGHT UNDER SECTION 65, THE PRIMARY QUESTION BEFORE THE BOARD IS NOT WHETHER THERE WAS JUST CAUSE FOR DISCHARGE BUT WHETHER THE PERSON COMPLAINING WAS DEALT WITH CONTRARY TO THE PROVISIONS OF THE ACT. HAVING CAREFULLY REVIEWED ALL OF THE EVIDENCE, WE FIND THAT THE COMPLAINANT HAS NOT DISCHARGED THE ONUS RESTING UPON HIM TO ESTABLISH THAT HE WAS DEALT WITH CONTRARY TO THE PROVISIONS OF THE LABOUR RELATIONS ACT. THE COMPLAINT IS THEREFORE DISMISSED.

18666-70-U: TORONTO MAILERS' UNION, No. 5 (COMPLAINANT) v. TORONTO STAR LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS J. BELL AND O. HODGES.

APPEARANCES AT THE HEARING: ALICK RYDER AND ROBERT EARLES FOR THE COMPLAINANT, DONALD J.M. BROWN AND DAVID M. BEATTY FOR THE RESPONDENT.

DECISION OF THE BOARD: JANUARY 21, 1971.

1. THIS IS A COMPLAINT FOR RELIEF UNDER SECTION 65 OF THE LABOUR RELATIONS ACT. AT THE HEARING, THE PARTIES RAISED PRELIMINARY ISSUES WHICH THE PARTIES REQUESTED THE BOARD TO DEAL WITH PRIOR TO THE BOARD ENTERTAINING THE EVIDENCE ON THE MERITS OF THE COMPLAINT. THE FIRST ISSUE WAS RAISED BY THE RESPONDENT AND CONCERNED THE BOARD'S JURISDICTION TO ENTERTAIN CERTAIN ASPECTS OF THE COMPLAINT IN THIS MATTER. FOLLOWING A DISCUSSION, THE RESPONDENT WITHDREW ITS OBJECTIONS TO THE BOARD'S JURISDICTION.

2. THE COMPLAINANT HAS REQUESTED PARTICULARS OF THE RESPONDENT'S REPLY. BY LETTER DATED DECEMBER 18, 1970, THE COMPLAINANT INITIATED ITS REQUEST FOR PARTICULARS AS FOLLOWS:

WE HAVE NOT YET RECEIVED A REPLY ON BEHALF OF THE RESPONDENT. IF, HOWEVER, THE RESPONDENT INTENDS TO DENY THE ALLEGATIONS CONTAINED IN SCHEDULE "B" TO THE COMPLAINT THE COMPLAINANT WILL REQUIRE PARTICULARS UPON WHICH THAT DENIAL IS BASED. THIS REQUEST FOR PARTICULARS IS ESPECIALLY IMPORTANT FOR CHARGE #6 RELATING TO DISMISSAL OF DAVID FERGUSON. WE ENCLOSE A COPY OF A NOTICE PREPARED OVER THE INITIALS OF MR. THALL WHICH ASSERTS THAT MR. FERGUSON WAS GUILTY OF INTIMIDATING EMPLOYEES WITH THREATS OR VEILED THREATS OF BODILY HARM. IN ORDER TO MEET THESE ALLEGATIONS THE COMPLAINANT REQUIRES PARTICULARS OF THE MATERIAL FACTS THE RESPONDENT INTENDS TO RELY UPON. IF THE RESPONDENT REQUIRES TIME TO OBTAIN THESE PARTICULARS WE ARE CONTENT TO A SHORT ADJOURNMENT OF THE HEARING.

3. ITEM 6 OF SCHEDULE "B" ATTACHED TO THE COMPLAINT IN THIS MATTER READS AS FOLLOWS:

ON OR ABOUT THE 6TH DAY OF NOVEMBER, 1970, DAVID FERGUSON, ONE OF THE AGGRIEVED PERSONS, WAS DEALT WITH BY C. J. DAVIES, MANAGER INDUSTRIAL RELATIONS, OF THE RESPONDENT, CONTRARY TO THE PROVISIONS OF SECTION 50 (A) OF THE LABOUR RELATIONS ACT IN THAT HE DID ON BEHALF OF THE RESPONDENT UNLAWFULLY DISMISS MR. FERGUSON BECAUSE HE WAS A MEMBER AND SUPPORTER OF THE COMPLAINANT.

4. THE RESPONDENT FILED A REPLY DATED JANUARY 7, 1971 AND THAT PORTION OF THE REPLY DEALING WITH THE COMPLAINT WITH RESPECT TO MR. FERGUSON READS AS FOLLOWS:

6. ON OR ABOUT THE 6TH DAY OF NOVEMBER, 1970, AFTER A HEARING HAD BEEN HELD, MR. FERGUSON'S EMPLOYMENT WAS TERMINATED BY THE COMPANY FOR INTIMIDATING AND ATTEMPTING TO COERCE AN EMPLOYEE IN THE MAIL ROOM TO SIGN A UNION CARD. THE COMPANY DENIES THAT MR. FERGUSON WAS DISMISSED BECAUSE HE WAS A MEMBER AND SUPPORTER OF THE INTERNATIONAL TYPOGRAPHICAL UNION.

5. THE COMPLAINANT BY LETTER DATED JANUARY 11, 1971 RENEWED ITS REQUEST FOR PARTICULARS AS FOLLOWS:

WE HAVE RECEIVED THE RESPONDENT'S REPLY HEREIN.

PARAGRAPH #6 OF THE REPLY DOES NOT IN OUR VIEW PROVIDE SUFFICIENT PARTICULARS TO PERMIT OUR CLIENTS TO MEET THE ALLEGATIONS AGAINST MR. FERGUSON OR TO PREPARE OUR CASE. WE SUBMIT THAT WE ARE ENTITLED TO BE ADVISED OF THE NAME OF THE EMPLOYEE REFERRED TO IN PARAGRAPH #6, THE DATE OR DATES ON WHICH THE ATTEMPTS TO COERCE TOOK PLACE AND THE NATURE OF MR. FERGUSON'S CONDUCT IN EACH INSTANCE. WE SUBMIT THAT THE RESPONDENT IS ALSO OBLIGED TO FURNISH THE PLACES WHERE THE ACTS COMPLAINED OF TOOK PLACE.

IN OUR VIEW IT IS THE RESPONDENT'S OBLIGATION TO PROVIDE PARTICULARS OF THE FOREGOING AND ITS FAILURE TO DO SO DISENTITLES IT FROM ADDUCING EVIDENCE ON THE MATTER.

WE HAVE TAKEN THE LIBERTY OF PROVIDING A COPY OF THIS LETTER TO THE SOLICITORS FOR THE RESPONDENT.

6. THE RESPONDENT DID NOT PROVIDE THE PARTICULARS REQUESTED BY THE COMPLAINANT.

7. AT THE HEARING IN THIS MATTER, THE COMPLAINANT ARGUED THAT IT WAS ENTITLED TO PARTICULARS OF THE RESPONDENT'S REPLY WITH RESPECT TO MR. FERGUSON IN ACCORDANCE WITH THE PROVISIONS OF SECTION 47 OF THE BOARD'S RULES OF PROCEDURE. THE COMPLAINANT REQUESTED THAT THE RESPONDENT PROVIDE THE COMPLAINANT WITH INFORMATION CONCERNING THE TIME WHEN, THE PLACE WHERE AND THE PERSON WHOM FERGUSON IS ALLEGED TO HAVE INTIMIDATED OR ATTEMPTED TO COERCE TO SIGN A UNION CARD. THE COMPLAINANT ALLEGED THAT IT WAS A MATTER OF NATURAL JUSTICE THAT THE PROVISIONS OF SECTION 47 OF THE BOARD'S RULES OF PROCEDURE BE APPLIED TO BOTH PARTIES EQUALLY AND THAT IF A COMPLAINANT IS REQUIRED TO GIVE PARTICULARS OF HIS COMPLAINT IT THEREFORE FOLLOWS IN THE VIEW OF THE COMPLAINANT THAT A RESPONDENT MUST FILE PARTICULARS OF ALLEGATIONS CONTAINED IN THE RESPONDENT'S REPLY. IT WAS THE COMPLAINANT'S POSITION THAT UNLESS THE COMPLAINANT IS INFORMED OF THE NAME OF THE PERSON ALLEGED TO BE INTIMIDATED, THE COMPLAINANT WOULD NOT BE ABLE TO PREPARE ITSELF TO MEET THE CASE AGAINST IT.

8. THE BOARD DENIES THE COMPLAINANT'S REQUEST FOR PARTICULARS IN THIS CASE.

9. SECTION 30, SUBSECTION (3) OF THE BOARD'S RULES OF PROCEDURE READS, IN PART, AS FOLLOWS: "THE PERSON AGAINST WHOM THE COMPLAINT IS MADE SHALL FILE HIS REPLY, IF ANY, . . ." THE WORDS IF ANY GIVE THE RESPONDENT AN OPTION AS TO WHETHER A REPLY NEED BE FILED. IT IS NOTED BY COMPARISON THAT SECTION 7 OF THE BOARD'S RULES OF PROCEDURE DOES NOT PROVIDE THIS OPTION TO A RESPONDENT IN AN APPLICATION FOR CERTIFICATION AND THE RESPONDENT IS ACCORDINGLY REQUIRED TO FILE A REPLY.

10. SECTION 47 OF THE BOARD'S RULES OF PROCEDURE READS, IN PART, AS FOLLOWS:

47(1) WHERE A PERSON INTENDS TO ALLEGE, AT THE HEARING OF AN APPLICATION OR COMPLAINT, IMPROPER OR IRREGULAR CONDUCT BY ANY PERSON, HE SHALL,

(A) INCLUDE IN THE APPLICATION OR COMPLAINT; OR

(B) FILE A NOTICE OF INTENTION THAT SHALL CONTAIN,

A CONCISE STATEMENT OF THE MATERIAL FACTS, ACTIONS AND OMISSIONS UPON WHICH HE INTENDS TO RELY AS CONSTITUTING SUCH IMPROPER OR IRREGULAR CONDUCT, INCLUDING THE TIME WHEN AND THE PLACE WHERE THE ACTIONS OR OMISSIONS COMPLAINED OF OCCURRED AND

THE NAMES OF THE PERSONS WHO ENGAGED IN OR COMMITTED THEM, BUT NOT THE EVIDENCE BY WHICH THE MATERIAL FACTS, ACTIONS OR OMISSIONS ARE TO BE PROVED, AND, WHERE HE ALLEGES THAT THE IMPROPER OR IRREGULAR CONDUCT CONSTITUTES A VIOLATION OF ANY PROVISION OF THE ACT, HE SHALL INCLUDE A REFERENCE TO THE SECTION OR SECTIONS OF THE ACT CONTAINING SUCH PROVISIONS.

IT IS NOTED THAT 47(1)(A) ONLY MAKES REFERENCE TO AN APPLICATION OR COMPLAINT. THERE IS NO SPECIFIC REQUIREMENT IN 47(1) THAT A PERSON IS REQUIRED TO INCLUDE IN A REPLY THE PARTICULARS REQUIRED BY SECTION 47 OF THE BOARD'S RULES.

11. IT IS NOT UNCOMMON FOR A RESPONDENT TO REPLY TO A COMPLAINT BY SIMPLY STATING, "THE RESPONDENT DENIES THE ALLEGATIONS CONTAINED IN THE COMPLAINT AND PUTS THE COMPLAINANT TO THE STRICT PROOF THEREOF." SUCH A REPLY, OR INDEED NO REPLY AT ALL, WOULD NOT PRECLUDE A RESPONDENT FROM ADDUCING EVIDENCE IN ANSWER TO A COMPLAINT AGAINST IT.

12. THE RESPONDENT IN THIS CASE HAS FILED A REPLY WHICH OUTLINES IN SUMMARY FORM THE REASONS WHICH IT ALLEGES ARE THE TRUE REASONS FOR THE DISCHARGE OF MR. FERGUSON.

13. THE RESPONDENT HAS NO ONUS ON IT OF PROVING WHY IT DISCHARGED MR. FERGUSON. THE ONUS OF PROOF IN THIS MATTER RESTS UPON THE COMPLAINANT. THE COMPLAINANT MUST ESTABLISH BY EVIDENCE THAT MR. FERGUSON WAS DISCHARGED BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 50(A) OF THE LABOUR RELATIONS ACT AS HAS BEEN ALLEGED. THE RESPONDENT IS NOT SEEKING ANY RELIEF UNDER THE LABOUR RELATIONS ACT. THE STATEMENTS CONTAINED IN THE REPLY ARE BY WAY OF AN ANSWER TO THE ALLEGATIONS MADE AND THE RELIEF CLAIMED BY THE COMPLAINANT. IT IS NOT UP TO THE RESPONDENT TO PROVE THE IMPROPER OR IRREGULAR CONDUCT WHICH IS REFERRED TO IN THE REPLY. IF THE COMPLAINANT FAILS TO ADDUCE SUFFICIENT EVIDENCE TO ESTABLISH THE ALLEGATIONS MADE IN THE COMPLAINT, THE RESPONDENT MAY NOT CALL ANY EVIDENCE IN THIS MATTER.

14. SECTION 47 OF THE BOARD'S RULES SPECIFICALLY PROTECTS A PARTY FROM BEING COMPELLED TO SET OUT ITS EVIDENCE IN THE DOCUMENTS WHICH PROCEED THE HEARING. EVEN IF A COMPLAINANT WAS ENTITLED TO PARTICULARS OF STATEMENTS CONTAINED IN THE RESPONDENT'S REPLY, THE NAME OF THE PERSON WHO IS ALLEGED TO HAVE BEEN INTIMIDATED NEED NOT BE DISCLOSED IN SUCH PARTICULARS. THE INTIMIDATED PERSON CANNOT BE CHARACTERIZED AS A PERSON WHO HAS ENGAGED IN OR COMMITTED IMPROPER OR IRREGULAR CONDUCT.

15. SINCE THE RESPONDENT IS NOT SEEKING ANY RELIEF OFFERED BY THE ACT AND SINCE THE RULES DO NOT SPECIFICALLY REQUIRE A REPLY TO CONTAIN THE INFORMATION REFERRED TO IN SECTION 47 OF THE BOARD'S

RULES OF PROCEDURE, THERE IS NOTHING IN THE BOARD'S RULES THAT REQUIRE THE RESPONDENT TO PROVIDE THE PARTICULARS REQUESTED BY THE COMPLAINANT.

16. WITH RESPECT TO THE ARGUMENT CONCERNING NATURAL JUSTICE, WE AGAIN POINT OUT THAT NO RELIEF IS SOUGHT BY THE RESPONDENT AND THE COMPLAINANT THEREFORE HAS "NO CASE TO MEET". IT IS THE RESPONDENT IN THIS MATTER WHO HAS A CASE TO MEET SINCE IT IS THE RESPONDENT WHO IS ALLEGED TO HAVE CONTRAVENED THE PROVISIONS OF THE LABOUR RELATIONS ACT. WHILE IT MAY BE THAT THE ALLEGATIONS CONCERNING THE REASONS FOR MR. FERGUSON'S DISCHARGE MIGHT BE ACTIVITY WHICH IS CONTRARY TO THE ACT, THAT IS NOT THE REASON THAT THE RESPONDENT HAS GIVEN FOR FERGUSON'S DISCHARGE. THE RESPONDENT TAKES THE POSITION THAT FERGUSON'S DISCHARGE WAS FOR JUST CAUSE. IF THE REAL REASON FOR THE DISCHARGE OF FERGUSON CONSTITUTES JUST CAUSE IN THAT E.G. FERGUSON'S CONDUCT WAS OF A NATURE THAT IT SERIOUSLY VIOLATED A PROPER PLANT RULE, THE FACT THAT THE SAME CONDUCT MIGHT ALSO BE CONTRARY TO THE ACT IS IMMATERIAL IN THESE PROCEEDINGS SINCE NO RELIEF IS SOUGHT BY THE RESPONDENT UNDER THE ACT, FROM EITHER FERGUSON OR THE COMPLAINANT BECAUSE OF FERGUSON'S ACTIVITIES.

17. IF DURING THE COURSE OF THE HEARING THE RESPONDENT TENDERS EVIDENCE CONCERNING AN EVENT WHICH WAS WITNESSED BY A THIRD PERSON WHO IS NOT PRESENT TO TESTIFY AND IF THE COMPLAINANT IS CAUGHT BY SURPRISE BECAUSE OF SUCH EVIDENCE AND WISHES AN OPPORTUNITY TO COMPEL THE ATTENDANCE OF THE THIRD PERSON, THE BOARD WILL ENTERTAIN A REQUEST FOR AN ADJOURNMENT FOR THAT PURPOSE SO THAT THE COMPLAINANT'S INTERESTS WILL BE PROTECTED IN THE LIGHT OF NATURAL JUSTICE. HOWEVER, THE EVIDENCE CONCERNING THE NAME OF THE PERSON ALLEGED TO HAVE BEEN INTIMIDATED BY FERGUSON NEED NOT BE DISCLOSED AT THIS TIME IN ORDER TO ENABLE THE COMPLAINANT TO PREPARE ITS CASE IN THIS MATTER. IF SUCH EVIDENCE IS SUBSEQUENTLY CALLED AT THE HEARING, DISCLOSURE WILL, OF COURSE, HAVE TO BE MADE BUT IN THE INTERIM THE RESPONDENT'S EVIDENCE WILL BE PROTECTED.

18. FOR THE REASONS SET OUT ABOVE, THE BOARD ACCORDINGLY DENIES THE COMPLAINANT'S REQUEST FOR PARTICULARS OF STATEMENTS CONTAINED IN THE RESPONDENT'S REPLY.

18739-70-U: RETAIL CLERKS INTERNATIONAL ASSOCIATION (COMPLAINANT) V. ZEHR'S MARKETS LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS J. BELL AND O. HODGES.

APPEARANCES AT THE HEARING: ROBIN COWTAN FOR THE COMPLAINANT, H. L. WUNDER, PAUL SNIDER AND CARL ZINKAN FOR THE RESPONDENT.

DECISION OF THE BOARD: JANUARY 21, 1971.

1. THIS IS A COMPLAINT FOR RELIEF UNDER SECTION 65 OF THE LABOUR RELATIONS ACT. RICK JOAD, THE AGGRIEVED PERSON, IS A YOUTH OF ABOUT SIXTEEN OR SEVENTEEN YEARS OF AGE. JOAD HAD BEEN EMPLOYED AS A PART-TIME EMPLOYEE OF THE RESPONDENT FOR A PERIOD OF SEVEN MONTHS PRIOR TO HIS DISCHARGE ON OCTOBER 23, 1970. JOAD COMMENCED WORK AS A PACKER AND IN THAT CAPACITY PACKED CUSTOMERS' PURCHASES INTO BAGS AND BOXES AND ASSISTED IN CARRYING THE CUSTOMERS' PURCHASES TO THE CUSTOMERS' AUTOMOBILES. WHEN HE WAS NOT BUSY PACKING JOAD WAS REQUIRED TO HELP FILL SHELVES IN THE STORE. JOAD RECEIVED MOST OF HIS INSTRUCTIONS ON HIS JOB FROM OTHER PART-TIME EMPLOYEES. APPARENTLY JOAD PREFERRED THE WORK OF STOCKING SHELVES TO THE WORK OF A PACKER AT THE FRONT END OF THE STORE. A FEW MONTHS AFTER HE WAS HIRED THE STORE MANAGER FOUND IT NECESSARY ON ONE OCCASION TO POINT OUT TO JOAD THAT HE WOULD NOT BE REGULARLY ASSIGNED TO STOCK A SECTION OF THE STORE UNTIL SUCH TIME AS HE PROVED HIMSELF AT THE FRONT END. THE STORE MANAGER TESTIFIED THAT THE ASSIGNMENT OF A SECTION OF THE STORE TO A PART-TIME EMPLOYEE WAS "A REWARD FOR A GOOD JOB AT THE FRONT END OF THE STORE". IN OR ABOUT SEPTEMBER 1970 JOAD WAS ASSIGNED A SECTION ON THE FLOOR TO LOOK AFTER. HE SPENT A MAJORITY OF HIS TIME WORKING IN HIS SECTION AND WOULD RELIEVE ON PACKING AS REQUIRED. WHEN HE WAS NEEDED AT THE FRONT END, THE CASHIER WOULD SOUND A BUZZER OR HIS NAME WOULD BE PAGED OVER THE PUBLIC ADDRESS SYSTEM. AT THE SOUND OF THE BUZZER, ALL PART-TIME EMPLOYEES, UNLESS SPECIFICALLY INSTRUCTED OTHERWISE, WERE REQUIRED TO STOP THE WORK THEY WERE ENGAGED IN AND TO PROCEED TO THE FRONT END TO ASSIST IN THE PACKING OF CUSTOMER PURCHASES. ON OCTOBER 23, THREE OR FOUR PART-TIME EMPLOYEES WERE WORKING SOLELY ON PACKING AND ANOTHER TEN OR TWELVE PART-TIME EMPLOYEES, INCLUDING JOAD, WERE WORKING IN VARIOUS SECTIONS OF THE STORE.

2. THE FACTS LEADING TO JOAD'S DISCHARGE ARE AS FOLLOWS. ON TUESDAY, OCTOBER 20, JOAD WAS NOT SCHEDULED TO WORK, HOWEVER, HE WENT TO THE STORE WHERE HE WAS EMPLOYED. WHILE ON THE STORE PARKING LOT HE WAS INTRODUCED TO MR. WITZEL, A REPRESENTATIVE OF LOCAL 206 OF THE COMPLAINANT UNION, WHO WAS ATTEMPTING TO ORGANIZE THE RESPONDENT'S EMPLOYEES. JOAD TOOK WITZEL THROUGH THE STORE AND OUT THE BACK DOOR OF THE STORE WHERE THEY MET WITH ANOTHER EMPLOYEE NAMED PAGE. AFTER A SHORT DISCUSSION PAGE AND JOAD BOTH SIGNED AN APPLICATION FOR MEMBERSHIP CARD. DURING THEIR DISCUSSION WITH WITZEL, AN EMPLOYEE NAMED WILSON, WHO ACTED AS RELIEF MANAGER IN THE ABSENCE OF THE STORE MANAGER, PASSED BY AND APPARENTLY SAW THE THREE ENGAGED IN DISCUSSION. WITZEL HAD SPOKEN TO WILSON ABOUT THE UNION EARLIER IN THE DAY.

3. ON THURSDAY, OCTOBER 22, WITZEL WAS AGAIN IN THE RESPONDENT'S STORE. WHILE THERE AN UNIDENTIFIED EMPLOYEE POINTED WITZEL OUT TO MR. SNIDER, THE STORE MANAGER, AND IDENTIFIED WITZEL AS A UNION ORGANIZER. SNIDER DEMANDED THAT WITZEL LEAVE THE STORE PREMISES IMMEDIATELY. SNIDER TESTIFIED THAT IT WAS GENERAL GOSSIP THAT THE UNION WAS ATTEMPTING TO ORGANIZE THE EMPLOYEES OF THE STORE. HE ALSO ACKNOWLEDGED THAT HE WAS INFORMED ON THURSDAY THAT JOAD, PAGE AND ANOTHER EMPLOYEE HAD JOINED THE UNION.

4. ON FRIDAY, OCTOBER 23, JOAD REPORTED TO WORK AND PUNCHED IN AT 5:00 P.M. AS SCHEDULED. AT THE END OF HIS SHIFT HIS EMPLOYMENT WITH THE RESPONDENT WAS TERMINATED BY SNIDER AND THREE REASONS WERE GIVEN. THE REASONS GIVEN BY SNIDER FOR THE DISCHARGE WERE AS FOLLOWS. SNIDER STATED THAT JOAD HAD FAILED TO RESPOND PROMPTLY TO THE BUZZER WHICH SUMMONED PART-TIME EMPLOYEES TO THE FRONT OF THE STORE FOR PACKING. HE ALSO STATED THAT JOAD TOOK MORE THAN THE TEN MINUTES ALLOWED FOR A COFFEE BREAK. SNIDER FURTHER POINTED OUT THAT JOAD HAD FAILED TO SWEEP THE AISLE PROPERLY AT THE END OF HIS SHIFT. ALL THE EVENTS COMPLAINED OF WHICH LED TO JOAD'S DISCHARGE HAPPENED ON OCTOBER 23.

5. AT THE HEARING SNIDER MADE REFERENCE TO ANOTHER OCCASION WHEN JOAD DID NOT ANSWER A SUMMONS ON THE PUBLIC ADDRESS SYSTEM. HOWEVER, WHEN HE SPOKE TO JOAD AT THE TIME, JOAD WAS COMING FROM THE BACK END OF THE STORE AND JOAD STATED THAT HE HAD BEEN OUTSIDE THE BUILDING PUTTING OUT GARBAGE AND HAD NOT HEARD THE PUBLIC ADDRESS SYSTEM. SNIDER APPEARED TO ACCEPT THIS EXPLANATION AND THIS OCCURRENCE WAS NOT ENUMERATED AS ONE OF THE CAUSES FOR DISCHARGE ON OCTOBER 23.

6. THE FACTS SURROUNDING THE EVENTS WHICH LED TO JOAD'S FAILURE TO RESPOND TO THE BUZZER WERE AS FOLLOWS. WHEN THE BUZZER SOUNDED JOAD WAS IN THE PROCESS OF UNLOADING A CARTON OF CAN GOODS AND PLACING THEM ON A SHELF. SINCE THERE WERE ONLY A FEW CANS LEFT IN THE CARTON WHEN THE BUZZER SOUNDED JOAD DECIDED TO EMPTY THE CARTON BEFORE RESPONDING TO THE BUZZER. AS HE WAS PLACING THE LAST CANS ON THE SHELF SNIDER

CAME UP TO HIM AND DIRECTED HIM TO GO TO THE FRONT OF THE STORE IMMEDIATELY. JOAD WENT TO THE FRONT OF THE STORE TO HELP PACK AS DIRECTED BY SNIDER WITHOUT COMMENT. AFTER HE COMMENCED TO PACK HE SAW ANOTHER PART-TIME EMPLOYEE COME TO THE FRONT IN RESPONSE TO THE BUZZER BUT WHEN HE SAW THAT ALL POSITIONS WERE FILLED THE OTHER PART-TIME EMPLOYEE WENT BACK TO THE WORK HE HAD LEFT. APART FROM DIRECTING JOAD TO GO TO THE FRONT END TO HELP PACK, SNIDER MADE NO OTHER COMMENT TO JOAD AT THAT TIME.

7. TURNING NEXT TO THE SITUATION SURROUNDING THE EXTENSION OF THE COFFEE BREAK PERIOD, JOAD STATED THAT AFTER GOING OUTSIDE THE STORE TO PURCHASE A CAN OF POP HE RETURNED TO THE LUNCH AREA IN THE BACK ROOM OF THE STORE TO DRINK THE POP AND SMOKE A CIGARETTE. HE ADMITTED THAT HE MAY HAVE OVERSTAYED THE COFFEE BREAK BY A MINUTE OR TWO BUT HAD RETURNED TO HIS SECTION OF THE STORE TO WORK BEFORE SNIDER APPROACHED HIM ABOUT THE MATTER. JOAD TESTIFIED THAT SNIDER HAD NEVER COMPLAINED ABOUT OVERSTAYING A COFFEE BREAK BEFORE.

8. SNIDER TESTIFIED THAT HE SAW JOAD RETURN TO THE STORE AFTER PURCHASING A SOFT DRINK AND AT THE TIME OF HIS RETURN JOAD WAS WITHIN THE TEN MINUTE PERIOD. AFTER THE TEN MINUTE PERIOD HAD ELAPSED, SNIDER WENT INTO THE LUNCH AREA AND FOUND JOAD SEATED AT THE LUNCH TABLE SMOKING A CIGARETTE. JOAD DID NOTHING TO INDICATE THAT HE WAS ABOUT TO RETURN TO WORK. SNIDER MADE NO COMMENT TO HIM AND SHORTLY THEREAFTER LEFT THE LUNCH AREA. SEVERAL MINUTES LATER SNIDER RETURNED TO THE LUNCH AREA AND ON HIS RETURN JOAD WAS IN THE PROCESS OF GETTING UP FROM THE TABLE WHERE HE HAD BEEN SEATED. AGAIN SNIDER MADE NO COMMENT TO JOAD AT THAT TIME AND JOAD WENT TO THE WASHROOM AND AFTERWARDS WAS RETURNING TO HIS WORK AREA IN THE STORE WHEN SNIDER ACCOSTED HIM. SNIDER TESTIFIED THAT A TOTAL OF ABOUT EIGHTEEN MINUTES HAD ELAPSED FROM THE COMMENCING OF JOAD'S COFFEE BREAK UNTIL HE SPOKE TO HIM AS HE WAS RETURNING TO WORK. WHEN SNIDER BROUGHT THE MATTER OF HIS DELAY TO JOAD'S ATTENTION, JOAD STATED THAT HE THOUGHT HE HAD ONLY TAKEN AN EXTRA MINUTE OR TWO. SNIDER TOLD JOAD THAT HE DID NOT KNOW WHAT TO DO WITH HIM AND WOULD CONSIDER THE MATTER OF HIS CONTINUED EMPLOYMENT UNTIL THE END OF THE SHIFT. WHILE IT WAS NOT MENTIONED AT THE TIME OF DISCHARGE, SNIDER TESTIFIED THAT ON ANOTHER OCCASION DURING THE EVENING HE FOUND JOAD SEATED ON A CARTON IN THE STOCKROOM AND LOOKING AT A CHECK LIST HE HAD IN HIS HAND. SNIDER ASSUMED THAT JOAD WAS REVERSING THE NORMAL PROCEDURE OF LISTING GOODS THAT WERE SHORT ON THE STORE SHELVES AND CHECKING TO SEE IF THEY WERE IN STOCK. HOWEVER, SNIDER DID NOT SPEAK TO JOAD AT THE TIME AND DID NOT ASK FOR AN EXPLANATION OF WHY JOAD WAS IN THE STOCKROOM. FINALLY, SNIDER COMPLAINED THAT JOAD HAD SWEEP AN AISLE NEXT TO THE MEAT COUNTER AT CLOSING TIME BUT HAD FAILED TO SWEEP BETWEEN DISPLAYS THAT WERE IN THE AISLE AND HAD LEFT PAPER ON THE FLOOR. JOAD TESTIFIED THAT HE HAD ASKED SNIDER IF SNIDER WISHED HIM TO SWEEP THE BACK ROOM. SNIDER GAVE AN ANSWER THAT JOAD DID NOT HEAR AND WHEN JOAD ASKED THE QUESTION AGAIN SNIDER ANGRILY REPLIED,

"No. Go up front and clean the front." Joad made no comment but went up to the front and swept the front area of the store. After sweeping the front Joad was on his way to the back of the store to shake out the mop he had used and Snider followed him and told Joad to give the mop to another employee. Snider then asked Joad to come up to the front with him and as they walked towards the front Snider pointed out pieces of paper that had not been swept up in the aisle by the meat counter. After pointing out the pieces of paper Snider asked if the front of the store was finished. Joad replied that the front end had been swept but that the pile of dirt was being taken care of by another employee. Snider walked to the front and satisfied himself that the pile had been picked up. Joad testified that he had not swept the area where the paper was found but had only swept the front end of the store. Snider stated that he had seen Joad sweeping in the area in front the meat counter.

9. As Joad proceeded to the back of the store Snider told him to punch out. When Joad made no comment Snider told him that he was through, permanently. Joad made no comment and went and punched out. After punching out Joad went to the washroom for his coat and as he was leaving the washroom Snider came up to him and advised him that he was discharged because he took too long on his coffee break, he did not respond to the packer buzzer and did not clean the floors properly. The other employees who were lining up to punch out were close by when Snider listed the reasons for the discharge and they apparently overheard the conversation. Joad made no comment and left.

10. Joad testified that there had been no criticism of his work prior to October 23. No other employee was discharged on October 23.

11. At the hearing Snider testified that he thought he probably told Joad to sweep out front. By "front" Snider was referring to the store area of the premises rather than the back room. He acknowledged that Joad may have misunderstood where he intended him to sweep. Snider characterized Joad's conduct on October 23 as insubordination.

12. Having considered all the evidence and the representations of the parties, we find that the complainant has satisfied us that Joad was discharged by the respondent because of his membership in the complainant union, contrary to section 50(a) of the Labour Relations Act. It is clear from the evidence that Snider was opposed to the union's organizational attempts as evidenced by the summary manner in which Witzel was told to leave the premises. Snider also was informed of Joad's membership in and support of the union. While Snider did not mention the union activity at the time of the discharge, this fact is not essential to our finding. It is a rare case where an employer openly announces that a discharge is for reasons contrary to the Labour Relations Act.

13. SNIDER HAD THE RIGHT TO PREVENT UNION ACTIVITY ON HIS PREMISES DURING WORKING HOURS BY WITZEL SINCE SUCH ACTIVITY WOULD LIKELY INTERFERE WITH PRODUCTION. IT IS RARE FOR AN EMPLOYER TO WELCOME THE ORGANIZATION OF HIS EMPLOYEES BY A UNION. HOWEVER, THE FACT OF THE EMPLOYER'S OPPOSITION TO THE UNION AND THE KNOWLEDGE OF THE MEMBERSHIP OF AN EMPLOYEE WHO IS SUBSEQUENTLY DISCHARGED IS RELEVANT EVIDENCE IN DETERMINING THE TRUE MOTIVE OF THE EMPLOYER IN EFFECTING THE DISCHARGE.

14. IN CASES SUCH AS THIS, THE BOARD MUST DETERMINE THE REAL REASON FOR THE DISCHARGE AND THIS IS NOT NECESSARILY THE SAME AS THE REASON ANNOUNCED BY THE EMPLOYER AT THE TIME OF DISCHARGE. WHEN DETERMINING THE BONA FIDES OF THE REASONS ANNOUNCED BY THE EMPLOYER, IT IS HELPFUL TO ASSESS THE REASONABLENESS OF THE EMPLOYER'S ACTIONS IN LIGHT OF ALL THE CIRCUMSTANCES. IF THE EMPLOYER'S ACTIONS ARE UNREASONABLE OR UNDULY HARSH AND IT IS ESTABLISHED, AS IN THIS CASE, THAT THE EMPLOYER HAD KNOWLEDGE OF THE UNION ACTIVITY WHICH HE OPPOSED, THE FACT THAT THE EMPLOYER'S ACTIONS WERE UNREASONABLE OR UNDULY HARSH WOULD CAST SERIOUS DOUBT ON THE VALIDITY OF THE REASONS ADVANCED BY THE EMPLOYER FOR THE DISCHARGE. IN ADDITION, WHERE THE EMPLOYER'S ACTIONS ARE INCONSISTENT THE GOOD FAITH OF THE EMPLOYER IS PLACED IN QUESTION.

15. WHEN THE ABOVE CRITERIA ARE APPLIED TO THE FACTS OF THIS CASE, WE FIND THAT JOAD'S MEMBERSHIP IN THE UNION CAUSED SNIDER TO SELECT HIM FOR SPECIAL TREATMENT ON OCTOBER 23 AND THAT THE EVENTS COMPLAINED OF WERE COLOURED BY HIS MEMBERSHIP IN THE UNION SO THAT THOSE THINGS THAT APPARENTLY HAD BEEN OVERLOOKED IN THE PAST TOOK ON NEW DIMENSIONS IN THE EYES OF SNIDER. WE ACCORDINGLY FIND THAT THE MOTIVATING CAUSE OF DISCHARGE WAS JOAD'S UNION MEMBERSHIP AND THIS WAS THE REAL REASON FOR THE DISCHARGE RATHER THAN THE EXCUSES ASSIGNED BY SNIDER. IN SO FINDING, WE DO NOT INTEND TO STATE THAT AN EMPLOYER CANNOT DISCIPLINE AN EMPLOYEE WHEN A UNION IS ON THE SCENE BUT IN ASSESSING WHETHER THE DISCIPLINE IS LEVIED AS A RESULT OF THE EMPLOYEE'S CONDUCT OR BECAUSE OF THE EMPLOYEE'S UNION ACTIVITY, THE BOARD ATTEMPTS TO DETERMINE WHETHER THE EMPLOYER HAS BEEN CONSISTENT IN HIS TREATMENT OF THE EMPLOYEE AND HAS TREATED ALL EMPLOYEES ALIKE. WHERE THERE IS EVIDENCE OF INCONSISTENCY, UNREASONABLENESS OR UNDULY HARSH TREATMENT WHICH IMMEDIATELY FOLLOWS THE FACT THAT THE EMPLOYEE'S MEMBERSHIP IN THE UNION HAS COME TO THE ATTENTION OF THE EMPLOYER, SUCH EVIDENCE LEADS TO THE CONCLUSION THAT THE EMPLOYER'S ACTIONS ARE MOTIVATED BY HIS KNOWLEDGE OF THE EMPLOYEE'S UNION ACTIVITY.

16. WE THEREFORE DIRECT THAT THE RESPONDENT REINSTATE RICK JOAD IN THE POSITION HELD BY HIM AT THE TIME OF HIS DISCHARGE. WE FURTHER DIRECT THAT THE RESPONDENT PAY TO RICK JOAD THE SUM OF \$125.00 AS COMPENSATION FOR LOSS OF EARNINGS SUSTAINED BY HIM BY REASON OF HIS HAVING BEEN DISCHARGED CONTRARY TO THE ACT, FOR THE PERIOD BETWEEN THE DATE OF HIS DISCHARGE AND JANUARY 12, 1971, THE DATE OF THE HEARING

IN THIS MATTER. IN ARRIVING AT THIS AMOUNT WE HAVE TAKEN INTO CONSIDERATION THE FACT THAT THE COMPLAINANT ALLOWED OVER FIVE WEEKS TO ELAPSE BEFORE THIS COMPLAINT WAS MADE AND NO REASONABLE EXPLANATION WAS GIVEN FOR THE DELAY. WE FURTHER DIRECT THAT THE PARTIES MEET FORTHWITH WITH A VIEW TO AGREEING ON THE AMOUNT OF THE LOSS OF EARNINGS, IF ANY, THAT RICK JOAD SUSTAINED BY REASON OF HIS DISCHARGE, BETWEEN THE DATE OF THE HEARING AND THE DATE OF HIS REINSTATEMENT. IN DEFAULT OF SUCH AGREEMENT BETWEEN THE PARTIES WITHIN FOURTEEN DAYS OF THE DATE HEREOF OR WITHIN SUCH FURTHER PERIOD AS THE PARTIES MAY MUTUALLY AGREE UPON, AT THE REQUEST OF EITHER PARTY, THE BOARD WILL HOLD A FURTHER HEARING AT WHICH THE PARTIES WILL HAVE THE OPPORTUNITY TO PRESENT EVIDENCE AS TO ANY ADDITIONAL AMOUNT TO BE PAID TO RICK JOAD.

18786-70-M: RETAIL CLERKS UNION LOCALS No. 206 AND 486 (APPLICANTS)
V. SUPER CITY DISCOUNT FOODS LIMITED AND LOBLAW GROCETERIAS CO.,
LIMITED AND UNION OF CANADIAN RETAIL EMPLOYEES (RESPONDENTS).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS P. J. O'KEEFFE AND J.E.C. ROBINSON, Q.C..

APPEARANCES AT THE HEARING: IAN SCOTT FOR THE APPLICANTS, W. GIBSON GRAY, Q.C., G. H. METCALFE AND F. D. KEAN FOR THE RESPONDENT COMPANIES, MARTIN LEVINSON AND D. GILBERT FOR THE RESPONDENT UNION.

DECISION OF J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBER P. J. O'KEEFFE: JANUARY 14, 1971.

. . .

2. THIS IS AN APPLICATION UNDER SECTION 47A OF THE LABOUR RELATIONS ACT WHEREIN THE APPLICANTS REQUEST THE BOARD TO DETERMINE WHETHER SUPER CITY DISCOUNT FOODS LIMITED SOLD ITS BUSINESS AT 2433 PRINCESS STREET, KINGSTON, TO LOBLAW GROCETERIAS CO., LIMITED WITHIN THE MEANING OF SECTION 47A OF THE ACT.

3. THE RELEVANT FACTS OF THIS CASE ARE SUBSTANTIALLY THE SAME AS THE FACTS IN AN EARLIER CASE BETWEEN THE SAME PARTIES REPORTED IN ONTARIO LABOUR RELATIONS BOARD MONTHLY REPORT, APRIL 1970, P. 118, WHEREIN THE BOARD FOUND THAT SUPER CITY DISCOUNT FOODS LIMITED HAD SOLD THAT PORTION OF ITS BUSINESS CARRIED ON IN TWO STORES AT OTTAWA TO LOBLAW GROCETERIAS CO., LIMITED.

4. HAVING REGARD TO ALL THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES IN THIS CASE AND FOR THE REASONS GIVEN BY THE BOARD IN SUPER CITY DISCOUNT FOODS LIMITED; LOBLAW GROCETERIAS CO. LIMITED; UNION OF CANADIAN RETAIL EMPLOYEES CASE, OLRB MONTHLY REPORT, APRIL 1970, P.

118, THE BOARD FINDS THAT ON OR ABOUT SEPTEMBER 26, 1970 SUPER CITY DISCOUNT FOODS LIMITED SOLD, WITHIN THE MEANING OF SECTION 47A OF THE ACT, THE BUSINESS CARRIED ON BY IT AT 2433 PRINCESS STREET, KINGSTON, TO LOBLAW GROCETERIAS Co., LIMITED.

5. IN VIEW OF THE EVIDENCE CONCERNING THE INTERMINGLING OF THE LOBLAW EMPLOYEES WHO WERE FORMERLY EMPLOYED AT THE OTHER TWO STORES OPERATED BY LOBLAW AT KINGSTON WITH THE EMPLOYEES AT 2433 PRINCESS STREET, KINGSTON, AND THE BOARD'S PRACTICE OF INCLUDING ALL FULL-TIME EMPLOYEES EMPLOYED IN RETAIL STORES OF THE CORPORATE RESPONDENTS IN ONE MUNICIPALITY IN THE SAME BARGAINING UNIT AND THE SIMILAR PRACTICE WITH RESPECT TO PART-TIME EMPLOYEES, AND HAVING REGARD TO THE EVIDENCE AND REPRESENTATIONS OF THE PARTIES IN THIS CASE, THE BOARD DEEMS IT APPROPRIATE TO CONDUCT A REPRESENTATION VOTE PURSUANT TO THE PROVISIONS OF SECTION 47A(7) IN THIS MATTER PRIOR TO MAKING ITS DETERMINATION UNDER SECTION 47A(5) OF THE ACT.

6. THE BOARD THEREFORE DIRECTS THAT A REPRESENTATION VOTE BE TAKEN OF THE EMPLOYEES OF LOBLAW GROCETERIAS Co., LIMITED IN THE FOLLOWING VOTING CONSTITUENCY:

ALL FULL-TIME EMPLOYEES OF LOBLAW GROCETERIAS Co., LIMITED AT 2433 PRINCESS STREET, KINGSTON, SAVE AND EXCEPT STORE MANAGERS, PERSONS ABOVE THE RANK OF STORE MANAGER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD (HEREINAFTER CALLED VOTING CONSTITUENCY #1)

. . .

8. VOTERS WILL BE GIVEN A CHOICE BETWEEN THE APPLICANTS AND THE UNION OF CANADIAN RETAIL EMPLOYEES.

9. THE BOARD FURTHER DIRECTS THAT A REPRESENTATION VOTE BE TAKEN OF THE EMPLOYEES OF LOBLAW GROCETERIAS Co., LIMITED IN THE FOLLOWING VOTING CONSTITUENCY:

ALL PART-TIME EMPLOYEES OF LOBLAW GROCETERIAS Co., LIMITED BEING EMPLOYEES REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AT 2433 PRINCESS STREET, KINGSTON, SAVE AND EXCEPT STORE MANAGERS AND PERSONS ABOVE THE RANK OF STORE MANAGER (HEREINAFTER CALLED VOTING CONSTITUENCY #2)

. . .

11. VOTERS WILL BE GIVEN A CHOICE BETWEEN THE APPLICANTS AND THE UNION OF CANADIAN RETAIL EMPLOYEES.

12. THE MATTER IS REFERRED TO THE REGISTRAR.

DECISION OF BOARD MEMBER J.E.C. ROBINSON, Q.C.: JANUARY 14, 1971.

WHILE I AM NOT IN AGREEMENT WITH SOME OF THE REASONS GIVEN BY THE BOARD IN FINDING A SALE UNDER SECTION 47A OF THE LABOUR RELATIONS ACT IN SUPER CITY DISCOUNT FOODS LIMITED; LOBLAW GROCETERIAS Co. LIMITED; UNION OF CANADIAN RETAIL EMPLOYEES CASE, OLRB MONTHLY REPORT, APRIL 1970, P. 118, I DO AGREE WITH MY COLLEAGUES THAT THE RELEVANT FACTS OF THIS CASE ARE SUBSTANTIALLY THE SAME AS THE STATED FACTS IN THE EARLIER CASE ABOVE REFERRED TO.

I WOULD ACCORDINGLY AGREE THAT THE DISPOSITION MADE BY MY COLLEAGUES IN THIS CASE IS CORRECT.

18830-70-M: THE INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, U.A.W., AND ITS LOCAL 195 (TRADE UNION) V. PARAGON TOOLS COMPANY, LIMITED (EMPLOYER).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: H. McCONVILLE FOR THE TRADE UNION, F. W. KNIGHT FOR THE EMPLOYER.

DECISION OF THE BOARD: JANUARY 15, 1971.

1. THIS IS A REFERENCE FROM THE MINISTER UNDER SECTION 79A OF THE LABOUR RELATIONS ACT.

2. THE RELEVANT FACTS MAY BE SUMMARIZED AS FOLLOWS. A GRIEVANCE IN WRITING DATED SEPTEMBER 28, 1970 WAS FILED BY THE TRADE UNION ON BEHALF OF AN EMPLOYEE IN THE BARGAINING UNIT WITH REGARD TO AN ALLEGED VIOLATION OF A SECTION OF THE COLLECTIVE AGREEMENT IN EFFECT BETWEEN THE PARTIES. (THE DETAILS OF THE GRIEVANCE ARE NOT IMPORTANT FOR PURPOSES OF THIS DECISION.) THE PARTIES BEING UNABLE TO SETTLE THE GRIEVANCE, PAUL HANSEN, THE SECRETARY-TREASURER OF LOCAL 195, ADVISED HUGH KAUER, THE GENERAL MANAGER OF THE COMPANY, THAT "IN ACCORDANCE WITH THE COLLECTIVE AGREEMENT RE ARBITRATION" HE WAS SUBMITTING THE NAME OF THE UNION NOMINEES TO "HANDLE" THE MATTER. HANSEN LISTED THE NAMES AND ADDRESSES OF THREE PERSONS. BY LETTER DATED OCTOBER 20, 1970, HUGH McCONVILLE, U.A.W. INTERNATIONAL REPRESENTATIVE, CANADIAN REGION, WROTE TO THE MINISTER ADVISING HIM THAT LOCAL 195 HAD SUBMITTED THE NAMES OF THREE

UNION NOMINEES IN ACCORDANCE WITH SECTION 14 OF THE COLLECTIVE AGREEMENT TO DEAL WITH THE GRIEVANCE, BUT THAT AS OF THAT DATE THE COMPANY HAD REFUSED TO SUBMIT THE NAMES OF ITS NOMINEES. McCONVILLE, IN HIS LETTER, REQUESTED THAT THE MINISTER APPOINT AN ARBITRATOR PURSUANT TO THE ACT TO DEAL WITH THE DISPUTE. BY LETTER DATED NOVEMBER 4, 1970, KAUER ADVISED McCONVILLE OF THE NAMES AND ADDRESSES OF THE THREE NOMINEES OF THE COMPANY. BY LETTER DATED NOVEMBER 5, 1970, McCONVILLE WROTE TO THE MINISTER STATING THAT HE (McCONVILLE) HAD CAREFULLY CONSIDERED THE NAMES OF THE COMPANY'S NOMINEES AND DID NOT FIND ANY OF THEM ACCEPTABLE "PRIMARILY ON THE BASIS THAT THEY HAVE NO IMPARTIAL ARBITRATION EXPERIENCE." McCONVILLE REPEATED HIS REQUEST THAT THE MINISTER APPOINT AN ARBITRATOR. BY LETTER DATED NOVEMBER 9, 1970, P. R. EMANUEL, THE SECRETARY OF THE COMPANY, INFORMED THE MINISTER THAT THE COMPANY HAD SUBMITTED THE NAMES OF ITS THREE NOMINEES IN ACCORDANCE WITH SECTION 14 OF THE COLLECTIVE AGREEMENT AND IS "WAITING TO HEAR FROM THE UNION AS TO WHEN THE RANDOM SELECTION OF AN ARBITRATOR FROM THE NOMINEES BY THE UNION AND BY THE COMPANY MAY BE SELECTED."

3. THE MINISTER HAS REFERRED TO THE BOARD THE QUESTION AS TO WHETHER IN ALL THE ABOVE CIRCUMSTANCES HE HAS THE AUTHORITY UNDER SUBSECTION (4) OF SECTION 34 OF THE ACT TO APPOINT AN ARBITRATOR AS REQUESTED BY LOCAL 195.

4. SECTION 14 OF THE COLLECTIVE AGREEMENT READS:

IF MANAGEMENT'S DECISION BE NOT SATISFACTORY TO THE EMPLOYEE CONCERNED, HE MAY, BY SERVING WRITTEN NOTICE OF APPEAL ON THE MANAGEMENT THROUGH THE CHAIRMAN OF THE COMMITTEE WITHIN TWO (2) WORKING DAYS OF THE DELIVERY OF THE DECISION, APPEAL THEREFROM TO AN IMPARTIAL UMPIRE WHO WILL BE SELECTED BY RANDOM CHOICE FROM A LIST COMPRISED OF THREE NOMINEES BY THE COMPANY AND THREE NOMINEES BY THE UNION, WHOSE DECISION SHALL BE FINAL AND BINDING ON BOTH PARTIES. THE COST OF THE ARBITRATOR SHALL BE SHARED EQUALLY BY THE COMPANY AND UNION.

5. SUBSECTIONS (3) AND (4) OF SECTION 34 OF THE ACT READS:

(3) IF, IN THE OPINION OF THE BOARD, ANY PART OF THE ARBITRATION PROVISION, INCLUDING THE METHOD OF APPOINTMENT OF THE ARBITRATOR OR ARBITRATION BOARD, IS INADEQUATE, OR IF THE PROVISION SET OUT IN SUBSECTION 2 IS ALLEGED

BY EITHER PARTY TO BE UNSUITABLE, THE BOARD MAY, ON THE REQUEST OF EITHER PARTY, MODIFY THE PROVISION SO LONG AS IT CONFORMS WITH SUBSECTION 1, BUT, UNTIL SO MODIFIED, THE ARBITRATION PROVISION IN THE COLLECTIVE AGREEMENT OR IN SUBSECTION 2, AS THE CASE MAY BE, APPLIES.

- (4) NOTWITHSTANDING SUBSECTION 3, IF THERE IS FAILURE TO APPOINT AN ARBITRATOR OR TO CONSTITUTE A BOARD OF ARBITRATION UNDER A COLLECTIVE AGREEMENT, THE MINISTER, UPON THE REQUEST OF EITHER PARTY, MAY APPOINT THE ARBITRATOR OR MAKE SUCH APPOINTMENTS AS ARE NECESSARY TO CONSTITUTE THE BOARD OF ARBITRATION, AS THE CASE MAY BE, AND ANY PERSON SO APPOINTED BY THE MINISTER SHALL BE DEEMED TO HAVE BEEN APPOINTED IN ACCORDANCE WITH THE COLLECTIVE AGREEMENT.

6. IN OUR OPINION, THERE HAS BEEN NO "FAILURE TO APPOINT AN ARBITRATOR" AS THESE WORDS ARE USED IN SUBSECTION (4). RATHER THERE HAS NOT BEEN A COMPLETION OF THE PROCEDURE SET OUT IN SECTION 14 OF THE AGREEMENT TO SELECT AN ARBITRATOR. THE TRADE UNION, IN EFFECT, IS ASKING THE BOARD TO MAKE A DETERMINATION ON THE QUALIFICATIONS OF THE EMPLOYER'S NOMINEES. ALTERNATIVELY, THE TRADE UNION SUBMITS THAT THE ARBITRATION PROVISION IS INADEQUATE IN LIGHT OF THE NOMINEES SELECTED BY THE COMPANY AND IS REQUESTING THAT THE BOARD MODIFY SECTION 14 PURSUANT TO SUBSECTION (3) OF SECTION 34 TO ENSURE THAT AN "IMPARTIAL UMPIRE" IS APPOINTED TO DEAL WITH GRIEVANCES UNDER THE COLLECTIVE AGREEMENT.

7. THE BOARD IS IN NO POSITION AND HAS NO BASIS TO MAKE ANY FINDING WITH RESPECT TO THE IMPARTIALITY OF THE NOMINEES OF THE EMPLOYER, OR, FOR THAT MATTER, THE NOMINEES OF THE TRADE UNION. FURTHER, THE ADEQUACY OF THE ARBITRATION PROVISION CONTAINED IN SECTION 14 OF THE COLLECTIVE AGREEMENT IS NOT BEFORE US IN THE INSTANT REFERENCE MADE UNDER SECTION 79A OF THE ACT. ANY DETERMINATION OF THAT ISSUE COULD ONLY BE MADE ON A REQUEST OF ONE OF THE PARTIES PURSUANT TO SUBSECTION (3) OF SECTION 34.

8. IN LIGHT OF ALL OF THE FOREGOING, THE BOARD'S ANSWER TO THE MINISTER'S QUESTION IS THAT THE MINISTER DOES NOT HAVE THE AUTHORITY UNDER SUBSECTION (4) OF SECTION 34 OF THE ACT TO APPOINT AN ARBITRATOR.

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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING JANUARY 1971

BARGAINING AGENTS CERTIFIED DURING JANUARY

NO VOTE CONDUCTED

17901-70-R: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNION 1687 (APPLICANT) V. LEVERT ELECTRIC POWER LINE CONTRACTORS LTD. (RESPONDENT).

UNIT #1: "ALL ELECTRICIANS AND ELECTRICIANS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A RADIUS OF THIRTY-FIVE MILES FROM THE CITY OF SUDBURY FEDERAL BUILDING, WHILE ENGAGED ON CONSTRUCTION AND INSTALLATION PROJECTS, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES).

UNIT #2: "ALL ELECTRICIANS, ELECTRICIANS' APPRENTICES, LINESMEN, LINEMEN'S APPRENTICES, GROUND MEN, MACHINE AND EQUIPMENT OPERATORS, TRUCK DRIVERS, DRILLERS AND ELECTRICIAN-WELDERS IN THE EMPLOY OF THE RESPONDENT WITHIN A RADIUS OF THIRTY-FIVE MILES FROM THE CITY OF SUDBURY FEDERAL BUILDING, SAVE AND EXCEPT PERSONS COMING WITHIN THE AFOREMENTIONED CLASSIFICATIONS ENGAGED IN UNDERGROUND CONSTRUCTION, INSTALLATION AND MAINTENANCE, NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND PERSONS COVERED BY A CERTIFICATE DATED SEPTEMBER 4, 1970, AND ISSUED BY THE BOARD TO THE APPLICANT." (20 EMPLOYEES IN THE UNIT).

18069-70-R: NURSES' ASSOCIATION JOSEPH BRANT MEMORIAL HOSPITAL (APPLICANT) V. THE BURLINGTON-NELSON HOSPITAL (RESPONDENT).

UNIT #1: "ALL REGISTERED AND GRADUATE NURSES IN THE EMPLOY OF THE RESPONDENT IN THE TOWN OF BURLINGTON, SAVE AND EXCEPT CO-ORDINATOR, PERSONS ABOVE THE RANK OF CO-ORDINATOR AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK." (158 EMPLOYEES IN THE UNIT). (THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE PERSON EMPLOYED AS STAFF HEALTH NURSE, PERSONNEL DEPARTMENT, IS NOT EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS AND IS THEREFORE INCLUDED IN THE BARGAINING UNIT).

UNIT #2: "ALL REGISTERED AND GRADUATE NURSES IN THE EMPLOY OF THE RESPONDENT IN THE TOWN OF BURLINGTON REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK, SAVE AND EXCEPT CO-ORDINATOR AND

PERSONS ABOVE THE RANK OF CO-ORDINATOR." (61 EMPLOYEES IN THE UNIT).

(SEE DECISION [1971] OLRB REP. 2).

18327-70-R: THE INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES - LOCAL UNION 1783 (APPLICANT) V. CANADIAN PITTSBURGH INDUSTRIES LIMITED (ONTARIO TINDOW PLANT) (RESPONDENT) V. INTERNATIONAL CHEMICAL WORKERS UNION LOCAL 172 (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS ONTARIO TINDOW PLANT, 1155 WELLINGTON ROAD SOUTH AT LONDON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (19 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE REPORT OF THE EXAMINER DATED ON NOVEMBER 23, 1970 AND TO THE AGREEMENT AND SUBMISSIONS OF THE PARTIES).

18592-70-R: INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) V. ADVANCED WIRE DIE LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (16 EMPLOYEES IN THE UNIT).

(SEE DECISION [1971] OLRB REP. 7).

18604-70-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL: CIO: CLC (APPLICANT) V. OSHAWA CO-OPERATIVE SUPPLIES LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OSHAWA, SAVE AND EXCEPT DEPARTMENT MANAGERS, PERSONS ABOVE THE RANK OF DEPARTMENT MANAGER, ACCOUNTANT, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (15 EMPLOYEES IN THE UNIT).

18678-70-R: OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION (APPLICANT) V. PEACE RIVER MINING & SMELTING LTD. (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 772 (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ANDERDON TOWNSHIP, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, SALES, OFFICE AND CLERICAL STAFF, AND PERSONS COVERED BY A CERTIFICATE DATE OCTOBER 5, 1970 AND ISSUED BY THE BOARD TO THE INTERVENER." (62 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

18782-70-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. RENFREW TOOL LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT RENFREW, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (11 EMPLOYEES IN THE UNIT).

18789-70-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE ESSEX COUNTY BOARD OF EDUCATION (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL OFFICE EMPLOYEES OF THE RESPONDENT IN ESSEX COUNTY, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (68 EMPLOYEES IN THE UNIT).

(SEE DECISION [1971] OLRB REP. 20).

18795-70-R: LABORERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL UNION No. 597 (APPLICANT) V. SHEA MASONRY & CONSTRUCTION LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF PETERBOROUGH, VICTORIA AND THE PROVISIONAL COUNTY OF HALIBURTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

18805-70-R: RETAIL AND FOOD EMPLOYEES LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. THE GREAT ATLANTIC AND PACIFIC TEA COMPANY, LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES AT MARKHAM, SAVE AND EXCEPT MEAT DEPARTMENT EMPLOYEES, ASSISTANT STORE MANAGERS AND HEAD CASHIERS, PERSONS ABOVE THE RANK OF ASSISTANT STORE MANAGER AND HEAD CASHIER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED IN OFF SCHOOL HOURS AND DURING THE SCHOOL VACATION PERIOD." (2 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR THE PURPOSE OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT PRODUCE DEPARTMENT HEADS ARE INCLUDED IN THE BARGAINING UNIT AND HEAD CASHIERS ARE EXCLUDED FROM THE BARGAINING UNIT).

18806-70-R: OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA LOCAL UNION No. 124 (APPLICANT) V. DALACOUSTIC CONTRACTORS LIMITED (RESPONDENT).

UNIT: "ALL PLASTERERS AND PLASTERERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."

(2 EMPLOYEES IN THE UNIT). (FOR THE PURPOSES OF CLARITY THE BOARD DECLARED THAT DRYWALL TAPERS ARE INCLUDED IN THE BARGAINING UNIT).

(SEE DECISION [1971] OLRB REP. 22).

18814-70-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. IAN DOUGLAS LTD. TRADING AS DRYDEN CLEANERS & LAUNDERERS V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT DRYDEN, SAVE AND EXCEPT THE SUPERINTENDENT AND PERSONS ABOVE THE RANK OF SUPERINTENDENT, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (8 EMPLOYEES IN THE UNIT).

18816-70-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. DOMINION STORES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES IN CORMWALL, SAVE AND EXCEPT ASSISTANT STORE MANAGERS, PERSONS ABOVE THE RANK OF ASSISTANT STORE MANAGER, BAKERY MANAGER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (34 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

18819-70-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA (APPLICANT) V. PUTTERBOUGH BROS., CONSTRUCTION CO. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

18822-70-R: CHRISTIAN TRADE UNIONS OF CANADA (LOCAL 6) (APPLICANT) V. SCHAIBLE ELECTRIC LIMITED (RESPONDENT).

UNIT: "ALL ELECTRICIANS AND ELECTRICIANS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF BRANT AND NORFOLK, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

18825-70-R: INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS (APPLICANT) V. ROWIKA INDUSTRIES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT MIDLAND, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, SALES AND OFFICE STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (16 EMPLOYEES IN THE UNIT).

18826-70-R: HOTEL AND RESTAURANT EMPLOYEES UNION, LOCAL 743 (APPLICANT) V. CORTINA INNS LIMITED (RESPONDENT).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT EMPLOYED AT ITS BALI-HI MOTOR HOTEL AT WINDSOR, SAVE AND EXCEPT MANAGER AND PERSONS ABOVE THE RANK OF MANAGER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND PERSONS FOR WHOM THE APPLICANT IS THE EXISTING BARGAINING AGENT." (3 EMPLOYEES IN THE UNIT).

18831-70-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE ESSEX COUNTY ROMAN CATHOLIC SEPARATE SCHOOL BOARD (RESPONDENT).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, ONE SECRETARY TO THE SECRETARY-TREASURER AND ONE SECRETARY TO THE ADMINISTRATOR, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (27 EMPLOYEES IN THE UNIT).

18832-70-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. J. B. CARROLL ELECTRIC LIMITED (RESPONDENT).

UNIT: "ALL ELECTRICIANS AND ELECTRICIANS' APPRENTICES IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (8 EMPLOYEES IN THE UNIT).

18834-70-R: THE LUMBER AND SAWMILL WORKERS' UNION, LOCAL 2995 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. LEVESQUE PLANING MILL LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT ITS PLANING MILL IN HEARST, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (17 EMPLOYEES IN THE UNIT).

18837-70-R: TEXTILE WORKERS UNION OF AMERICA, CLC, AFL-CIO (APPLICANT) V. PENHANS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PARIS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, CHIEF ENGINEER, OFFICE AND SALES STAFF, LABORATORY TECHNICIANS, INDUSTRIAL ENGINEERS, PRINTERS PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (204 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR PURPOSES OF CLARITY, THE BOARD DECLARED THAT PERSONS CLASSIFIED BY THE RESPONDENT AS BOILERMEN AND WATCHMEN ARE INCLUDED IN THE BARGAINING UNIT).

18845-70-R: DIVISION 946 AMALGAMATED TRANSIT UNION (APPLICANT) V. ALLAN J. McDONALD LTD. (TRANSIT DIVISION) (RESPONDENT) V. CORNWALL STREET RAILWAY, LIGHT & POWER CO. LTD. (INTERVENER).

UNIT: "ALL BUS DRIVERS EMPLOYED BY THE RESPONDENT WORKING AT AND OUT OF CORNWALL." (21 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

18848-70-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT) V. DUFFERIN MATERIALS AND CONSTRUCTION LTD. (RESPONDENT) V. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 837 (INTERVENER).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN THE REGIONAL MUNICIPALITY OF NIAGARA AND THE COUNTY OF HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (8 EMPLOYEES IN THE UNIT).

(SEE DECISION [1971] OLRB REP. 23).

18857-70-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL UNION No. 880 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. WINDSOR BUILDING MAINTENANCE (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT AND WORKING OUT OF WINDSOR, SAVE AND EXCEPT OWNER-MANAGER." (2 EMPLOYEES IN THE UNIT).

18859-70-R: CHATHAM CONSTRUCTION WORKERS ASSOCIATION, LOCAL No. 53, AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. SIMCAY CONTRACTORS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, AND ALL TRUCK DRIVERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF ESSEX AND KENT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (20 EMPLOYEES IN THE UNIT).

18863-70-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. ADAMS FURNITURE CO. LIMITED (RESPONDENT) V. EMPLOYEE (OBJECTOR).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WATERLOO, SAVE AND EXCEPT STORE MANAGER AND PERSONS ABOVE THE RANK OF STORE MANAGER." (6 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

18865-70-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 493 (APPLICANT) V. CLOUTIER BROS. DIAMOND DRILLING (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIP OF SOUTH LORRAINE AND THE MUNICIPALITIES IMMEDIATELY ADJACENT THERETO, ALL IN THE DISTRICT OF TIMISKAMING, WHILE ENGAGED IN CONSTRUCTION PROJECTS, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT). (FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT THE TERM "CONSTRUCTION LABOURERS" INCLUDES "DRILLERS").

18867-70-R: RETAIL AND FOOD EMPLOYEES LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. THE GREAT ATLANTIC AND PACIFIC TEA COMPANY, LIMITED (RESPONDENT) V. EMPLOYEE (OBJECTOR).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORE AT BRAMPTON, SAVE AND EXCEPT MEAT DEPARTMENT EMPLOYEES, ASSISTANT STORE MANAGER AND HEAD CASHIER, PERSONS ABOVE THE RANK OF ASSISTANT STORE MANAGER AND HEAD CASHIER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED IN OFF-SCHOOL HOURS AND DURING THE SCHOOL VACATION PERIOD." (3 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR THE PURPOSES OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT PRODUCE DEPARTMENT HEADS ARE INCLUDED IN THE BARGAINING UNIT AND HEAD CASHIERS ARE EXCLUDED FROM THE BARGAINING UNIT).

18868-70-R: AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. PASQUALE BROS. LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN CONCORD, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (36 EMPLOYEES IN THE UNIT).

18870-70-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. MANUFACTURING LIFE INSURANCE COMPANY (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

18875-70-R: THE BRICKLAYERS, MASONS AND PLASTERERS INTERNATIONAL UNION OF AMERICA (APPLICANT) V. PARON CONSTRUCTION (EASTERN) LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL BRICKLAYERS AND BRICKLAYERS' APPRENTICES, STONEMASONS AND STONEMASONS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WELLINGTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (9 EMPLOYEES IN THE UNIT).

18876-70-R: INTERNATIONAL BROTHERHOOD OF PAINTERS & ALLIED TRADES GLASSWORKERS LOCAL 1487 (APPLICANT) V. GLAVERBEL GLASS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT CONCORD, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND INTERNATIONAL BROTHERHOOD OF PAINTERS & ALLIED TRADES GLASSWORKERS LOCAL 1819." (39 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

18904-70-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. MACGREGOR CRANE SERVICE LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF LENNOX AND ADDINGTON, FRONTENAC AND THE TOWNSHIPS OF REAR OF LEEDS AND LANSLOWNE, FRONT OF LEEDS AND LANSLOWNE, REAR OF YONGE AND ESCOTT, FRONT OF YONGE AND FRONT OF ESCOTT IN THE COUNTY OF LEEDS ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

18920-70-R: OPERATIVE PLASTERERS AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA LOCAL UNION 124 (APPLICANT) V. OLYMPIA & YORK DEVELOPMENT LIMITED (RESPONDENT).

UNIT: "ALL CEMENT MASONS AND CEMENT MASONS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

APPLICATIONS CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

17559-69-R: OTTAWA BOARD OF EDUCATION EMPLOYEES ASSOCIATION (APPLICANT) V. OTTAWA BOARD OF EDUCATION (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 796 (INTERVENER). (APPLICANT CERTIFIED).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (434 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		434
NUMBER OF PERSONS WHO CAST BALLOTS	397	
NUMBER OF SPOILED BALLOTS	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	324	
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	72	

18780-70-R: CHRISTIAN TRADE UNIONS OF CANADA (LOCAL 6) (APPLICANT) V. OVERHEAD CRANE SERVICE & SUPPLY COMPANY LIMITED (RESPONDENT) V. IRON WORKERS LOCAL 786 (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE COMPANY AT HAMILTON, ONTARIO, SAVE AND EXCEPT FOREMAN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE AND SALES STAFF." (8 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		6
NUMBER OF PERSONS WHO CAST BALLOTS	6	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	6	
NUMBER OF BALLOTS MARKED IN FAVOUR OF OVERHEAD CRANE EMPLOYEES' ASSOCIATION	0	

APPLICATIONS FOR CERTIFICATION DISMISSED DURING JANUARY

NO VOTE CONDUCTED

18661-70-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. INDUCON CONSULTANTS OF CANADA LIMITED (RESPONDENT). (7 EMPLOYEES).

18676-70-R: INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (APPLICANT) V. RIVERSIDE HOSPITAL OF OTTAWA (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANKS OF SUPERVISOR AND FOREMAN, PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 796, OFFICE AND CLERICAL STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (56 EMPLOYEES IN THE UNIT). (FOR THE PURPOSES OF CLARITY, THE BOARD DECALRED THAT THE TERM TECHNICAL PERSONNEL COMPRISES PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, ELECTRO-ENCEPHALOGRAPHISTS, ELECTRICAL SHOCK THERAPISTS, LABORATORY, RADIOLOGICAL, PATHOLOGICAL AND CARDIOLOGICAL TECHNICIANS).

(SEE DECISION [1971] OLRB REP. 10).

18688-70-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL UNION 93 (APPLICANT) V. CANTUS CONSTRUCTION (CARLETON) LIMITED (RESPONDENT). (2 EMPLOYEES).

18709-70-R: THE TORONTO UNION OF TAXI EMPLOYEES (APPLICANT) V. HOVE TAXI LTD. (RESPONDENT).

- AND -

18710-70-R: THE TORONTO UNION OF TAXI EMPLOYEES (APPLICANT) V. GOLD-LIGHT TAXI LTD. (RESPONDENT).

- AND -

18714-70-R: THE TORONTO UNION OF TAXI EMPLOYEES (APPLICANT) V. ELLEE TAXI LTD. (RESPONDENT).

- AND -

18715-70-R: THE TORONTO UNION OF TAXI EMPLOYEES (APPLICANT) V. SAY-GO TAXI LTD. (RESPONDENT). (389 EMPLOYEES).

(SEE DECISION [1971] OLRB REP. 14).

18721-70-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1669 (APPLICANT) V. CANADIAN INTERNATIONAL COMSTOCK COMPANY LIMITED (RESPONDENT). (2 EMPLOYEES).

18734-70-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. LITTLE'S NURSING HOME (ESSEX) LIMITED (RESPONDENT).

UNIT #1: "ALL EMPLOYEES OF THE RESPONDENT AT THE TOWN OF ESSEX, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, REGISTERED AND GRADUATE NURSES, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (27 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (CERTIFIED).

UNIT #2: "ALL EMPLOYEES OF THE RESPONDENT AT THE TOWN OF ESSEX REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (12 EMPLOYEES IN THE UNIT). (DISMISSED).

18750-70-R: LOCAL 219, NATIONAL COUNCIL OF CANADIAN LABOUR (APPLICANT) V. ZELLER'S LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS STORE NUMBER 119 AT HAMILTON, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK." (102 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE CHRISTMAS HELP ARE NOT INCLUDED IN THE BARGAINING UNIT AND THAT PERSONS EMPLOYED IN THE BEAUTY SALON ARE NOT EMPLOYED BY THE RESPONDENT AND ACCORDINGLY ARE NOT INCLUDED IN THE BARGAINING UNIT).

18808-70-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. TORONTO AND YORK ROADS COMMISSION (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (32 EMPLOYEES).

18840-70-R: LABORERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL UNION No. 597 (APPLICANT) V. STEWART & HINAN CONSTRUCTION (RESPONDENT). (5 EMPLOYEES).

18852-70-R: CARPENTERS UNION 249 KINGSTON ONT. (APPLICANT) V. MCKAY-COCKER CONSTRUCTION LTD. (RESPONDENT). (2 EMPLOYEES).

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

18508-70-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. LE CONSEIL DES ECOLES CATHOLIQUES DE PRESCOTT-RUSSELL (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF PRESCOTT AND RUSSELL ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS, SAVE AND EXCEPT SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (37 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	35
NUMBER OF PERSONS WHO CAST BALLOTS	35
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	11
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	24

18560-70-R: RETAIL AND FOOD EMPLOYEES LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. ZEHR'S MARKETS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES AT PRESTON REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED IN OFF-SCHOOL HOURS AND DURING THE SCHOOL VACATION PERIOD." (34 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	21
NUMBER OF PERSONS WHO CAST BALLOTS	21
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	9
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	12

18577-70-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE COUNTY OF PEEL (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT #1: "ALL EMPLOYEES OF THE RESPONDENT IN THE ROAD CONSTRUCTION DIVISION, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, INSIDE TECHNICAL STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (15 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (CERTIFIED).

UNIT #2: "ALL EMPLOYEES OF THE RESPONDENT IN THE ROAD MAINTENANCE DIVISION, SAVE AND EXCEPT SUB-FOREMEN, PERSONS ABOVE THE RANK OF SUB-FOREMAN, OFFICE STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (49 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (DISMISSED).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	48
NUMBER OF PERSONS WHO CAST BALLOTS	48
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	19
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	29

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING JANUARY

18811-70-R: INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES LOCAL 1819 (APPLICANT) V. PILKINGTON BROS. (CANADA) LTD. (RESPONDENT) V. INTERNATIONAL CHEMICAL WORKERS UNION LOCAL 424 (INTERVENER). (166 EMPLOYEES).

18818-70-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO: CLC (APPLICANT) V. MOOREFIELD PRODUCE COMPANY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (25 EMPLOYEES).

18820-70-R: THE CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. THE WELLESLEY HOSPITAL (RESPONDENT) V. SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 204 (INTERVENER). (18 EMPLOYEES).

18823-70-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL UNION 446, SAULT STE. MARIE, ONTARIO CANADA (APPLICANT) V. S. D. ADAMS WELDED PRODUCTS LTD. NORTHERN AVE. EAST, SAULT STE. MARIE, ONTARIO CANADA (RESPONDENT). (2 EMPLOYEES).

18836-70-R: NATIONAL ASSOCIATION OF BROADCAST EMPLOYEES AND TECHNICIANS AFL-CIO-CLC (APPLICANT) V. ONTARIO EDUCATIONAL COMMUNICATIONS AUTHORITY (RESPONDENT). (55 EMPLOYEES).

18856-70-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. HARRY RUBIN & SON LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (17 EMPLOYEES).

18872-70-R: STAFF ASSOCIATION OF PRINCE EDWARD COUNTY MEMORIAL HOSPITAL PICTON, ONTARIO (APPLICANT) V. PRINCE EDWARD COUNTY MEMORIAL HOSPITAL PICTON, ONTARIO (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 729 (INTERVENER). (77 EMPLOYEES).

18880-70-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. DOMINION STORES LTD. - HAWKSBURY (RESPONDENT). (5 EMPLOYEES).

18893-70-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. PAZNER SCRAP METALS CO. LTD. (RESPONDENT) V. TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, LOCAL 880 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (INTERVENER). (3 EMPLOYEES).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED
OF DURING JANUARY

18595-70-R: EMPLOYEES OF XEROX OF CANADA LIMITED, MANUFACTURING FACILITY, 1333 NORTH SERVICE ROAD, EAST, OAKVILLE, ONTARIO (APPLICANTS) V. AMALGAMATED CLOTHING WORKERS OF AMERICA, XEROGRAPHIC DIVISION, TORONTO JOINT BOARD, LOCAL 14J (RESPONDENT). (GRANTED).

UNIT: "ALL EMPLOYEES OF XEROX OF CANADA, LIMITED, MANUFACTURING FACILITY, LOCATED AT OAKVILLE, SAVE AND EXCEPT FOREMEN AND SUPERVISORS, PERSONS ABOVE THE RANK OF FOREMAN AND SUPERVISOR, OFFICE STAFF, SALES STAFF, TECHNICAL REPRESENTATIVES, ENGINEERS, CHEMISTS, DRAFTSMEN,

TECHNICAL AND ENGINEERING AIDES, DISPATCHERS, EXPEDITERS, GUARDS AND WATCHMEN." (5 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		5
NUMBER OF PERSONS WHO CAST BALLOTS		5
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	2	
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	3	

18631-70-R: GEORGETTE ROBICHAUD (APPLICANT) V. HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION A.F.L. - C.I.O. - C.L.C. LOCAL 197 (RESPONDENT) V. WENTWORTH ARMS HOTEL LIMITED (INTERVENER). (11 EMPLOYEES). (DISMISSED).

(SEE DECISION [1971] OLRB REP. 25).

18775-70-R: GEORGE BROWN ON BEHALF OF HIMSELF AND OTHER APPLICANTS (APPLICANTS) V. HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION (RESPONDENT). (65 EMPLOYEES). (DISMISSED).

18844-70-R: MEMBERS OF LOCAL 772 CANADA SAND PAPER LTD. EMPLOYEES OF STEAM PLANT (APPLICANTS) V. INTERNATIONAL UNION OF OP. ENGINEERS (RESPONDENT) V. CANADA SAND PAPERS LTD. (INTERVENER). (4 EMPLOYEES). (GRANTED).

APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF

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18370-70-U: TIMMINS ELECTRIC LIMITED (APPLICANT) V. FRANK PONTELLO, BARRY BEALS, BERNARD ROBERGE, RAY HURTUBISE (RESPONDENTS). (WITHDRAWN).

18884-70-U: RALPH M. PARSONS CONSTRUCTION CO. OF CANADA LIMITED (APPLICANT) V. THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, AFL-CIO-CLC (RESPONDENT). (WITHDRAWN).

18885-70-U: RALPH M. PARSONS CONSTRUCTION CO. OF CANADA LIMITED (APPLICANT) V. LARRY G. ARMSTRONG ET AL (RESPONDENTS). (WITHDRAWN).

18913-70-U: HARRY WOODS TRANSPORT LIMITED (APPLICANT) V. CLIFFORD DAWSON ET AL (RESPONDENTS). (WITHDRAWN).

18915-70-U: HARRY WOODS TRANSPORT LIMITED (APPLICANT) V. TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL UNION 141; GENERAL TRUCK DRIVERS UNION, LOCAL 879; GENERAL TRUCK DRIVERS UNION, LOCAL UNION 938 (RESPONDENTS). (WITHDRAWN).

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18931-70-U: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. S. McNALLY & SONS LTD. (RESPONDENT). (WITHDRAWN).

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18369-70-U: TIMMINS ELECTRIC LIMITED (APPLICANT) V. FRANK PONTELLO, BARRY BEALS, BERNARD ROBERGE, RAY HURTUBISE (RESPONDENTS). (WITHDRAWN).

18613-70-U: STEEN MECHANICAL CONTRACTORS LTD. (APPLICANT) V. PATRICK M. BARNES ET AL (RESPONDENT). (WITHDRAWN).

18685-70-U: THE FOUNDATION COMPANY OF CANADA LIMITED (APPLICANT) V. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION 183, GERRY GALLAGHER, THOMAS CONNELLY, FRANCISCO PACHECO, VINCENT BOYLE, PATRICK HAIGNEY (RESPONDENTS). (GRANTED).

18752-70-U: DOMINION BRIDGE COMPANY LIMITED (APPLICANT) V. GEORGE LEHTONEN ET AL (RESPONDENTS). (WITHDRAWN).

18809-70-U: THE FOUNDATION COMPANY OF CANADA LIMITED AND A. D. ROSS & COMPANY LIMITED (APPLICANTS) V. JOHN HURTUBISE, DOSITHEE BOUTHILLETTE, ALEX HOEKSMAN, GARY SCHMID, HAROLD O'GORMAN, MARCEL FONTAINE (RESPONDENTS). (DISMISSED).

(SEE DECISION [1971] OLRB REP. 29).

18828-70-U: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. LIBERTY BUILDING LIMITED (RESPONDENT). (GRANTED).

18871-70-U: PRINTING SPECIALTIES & PAPER PRODUCTS UNION LOCAL 466 (APPLICANT) V. DOMTAR PACKAGING LIMITED (CARTON SPECIALTIES DIVISION) (RESPONDENT). (WITHDRAWN).

18914-70-U: HARRY WOODS TRANSPORT LIMITED (APPLICANT) V. CLIFFORD DAWSON ET AL (RESPONDENTS). (WITHDRAWN).

18916-70-U: HARRY WOODS TRANSPORT LIMITED (APPLICANT) V. FRED JOHNSTON AND, TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL UNION 141; GENERAL TRUCK DRIVERS UNION, LOCAL UNION 879; GENERAL TRUCK DRIVERS UNION, LOCAL UNION 938 (RESPONDENTS). (WITHDRAWN).

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18468-70-U: FRANK AUCIELLO (COMPLAINANT) V. WESTON BAKERIES LIMITED (RESPONDENT). (DISMISSED).

(SEE DECISION [1971] OLRB REP. 30).

18666-70-U: TORONTO MAILERS' UNION, No. 5 (COMPLAINANT) V. TORONTO STAR LIMITED (RESPONDENT). (GRANTED).

(SEE DECISION [1971] OLRB REP. 34).

18679-70-U: OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION (COMPLAINANT) V. PEACE RIVER MINING & SMELTING LTD. (RESPONDENT). (WITHDRAWN).

18693-70-U: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (COMPLAINANT) V. DRAVO OF CANADA LIMITED (RESPONDENT). (WITHDRAWN).

18739-70-U: RETAIL CLERKS INTERNATIONAL ASSOCIATION (COMPLAINANT) V. ZEHR'S MARKETS LIMITED (RESPONDENT). (GRANTED).

(SEE DECISION [1971] OLRB REP. 39).

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18829-70-M: WATERLOO METAL STAMPINGS LTD. (COMPANY) V. INTERNATIONAL UNION OF DOLL AND TOY WORKERS OF THE UNITED STATES & CANADA (TRADE UNION). (WITHDRAWN).

18839-70-M: ANCHOR TEXTILES LIMITED (EMPLOYER) V. LAUNDRY, DRY CLEANING & DYE HOUSE WORKERS' INTERNATIONAL UNION, LOCAL 351 (TRADE UNION). (GRANTED).

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ONTARIO LABOUR RELATIONS BOARD REPORTS

A MONTHLY SERIES OF DECISIONS FROM THE

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BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: J. R. CHARLEBOIS AND JOHN MEIORIN FOR THE APPLICANT; NO ONE APPEARING FOR THE RESPONDENT; NO ONE APPEARING FOR THE INTERVENER; R. KOSKIE AND T. MICHAEL FOR COUNCIL OF CONCRETE-FORMING TRADE UNIONS.

DECISION OF THE BOARD: FEBRUARY 8, 1971.

1. ON MAY 12, 1970 THE APPLICANT FILED AN APPLICATION FOR CERTIFICATION. THE TERMINAL DATE FIXED FOR THIS APPLICATION WAS MAY 20, 1970. IN A TELEGRAM RECEIVED BY THE BOARD ON MAY 14, 1970, THE COUNCIL OF CONCRETE-FORMING TRADE UNIONS (HEREINAFTER REFERRED TO AS THE "COUNCIL") ADVISED THE BOARD THAT IT REPRESENTED CERTAIN EMPLOYEES OF THE RESPONDENT AND INTENDED TO INTERVENE IN THIS MATTER. THE COUNCIL, HOWEVER, FAILED TO FILE WITH THE BOARD FORM 57, INTERVENTION, CONSTRUCTION INDUSTRY, EVIDENCE OF MEMBERSHIP FOR EMPLOYEES AFFECTED BY THIS APPLICATION FOR CERTIFICATION OR ANY EVIDENCE THAT IT WAS THE BARGAINING AGENT OF ANY EMPLOYEES WHO MIGHT BE AFFECTED BY THIS APPLICATION FOR CERTIFICATION.

2. IN A DECISION DATED MAY 27, 1970, THE BOARD HELD THAT THE COUNCIL HAD FAILED TO ESTABLISH THAT IT HAD ANY STATUS TO INTERVENE IN THIS APPLICATION AND ISSUED A CERTIFICATE TO THE APPLICANT WITH RESPECT TO A BARGAINING UNIT DEFINED IN PARAGRAPH FIVE THEREOF.

3. ON NOVEMBER 26 AND DECEMBER 4, 1970 THE BOARD RECEIVED LETTERS FROM THE COUNCIL WHEREIN ALLEGATIONS OF IMPROPER OR IRREGULAR CONDUCT WERE MADE AGAINST THE APPLICANT AND THE RESPONDENT. THE COUNCIL ALLEGED THAT THE RESPONDENT HAD ASSISTED THE APPLICANT IN ARRANGING TO HAVE ITS EMPLOYEES SIGN APPLICATIONS FOR MEMBERSHIP IN THE APPLICANT AND THAT JOHN MEIORIN, PRESIDENT OF THE APPLICANT, DID NOT MAKE THE REQUIRED INQUIRIES WHEN COMPLETING FORM 54, DECLARATION CONCERNING MEMBERSHIP DOCUMENTS, CONSTRUCTION INDUSTRY. THE COUNCIL ALSO MADE UNSPECIFIC CHARGES THAT ONE OF THE APPLICANT'S ORGANIZERS HAD SIGNED UP A NUMBER OF PERSONS INTO MEMBERSHIP, BUT HAD NOT DELIVERED TO THE APPLICANT OR ANYONE ON ITS BEHALF A SUM OF AT LEAST ONE DOLLAR IN CONNECTION WITH EACH APPLICATION FOR MEMBERSHIP. THE COUNCIL ALSO FILED FURTHER UNSPECIFIC CHARGES THAT AN ORGANIZER OF THE APPLICANT ARRANGED TO HAVE A NUMBER OF PERSONS SIGN APPLICATIONS FOR MEMBERSHIP IN THE APPLICANT, BUT THAT AT NO TIME DID ANY OF THESE PERSONS PAY TO THE ORGANIZER OR TO THE APPLICANT A SUM OF AT LEAST ONE DOLLAR.

4. THESE ABOVE REFERRED TO ALLEGATIONS OF IMPROPER OR IRREGULAR CONDUCT ARE SAID TO HAVE OCCURRED DURING THE LATTER PART OF APRIL AND DURING THE WHOLE OF MAY 1970. THE COUNCIL ALSO ALLEGED THAT DURING THE MONTH OF NOVEMBER 1970 ITS INFORMANT WAS INTIMIDATED AND COERCED BY OFFICERS OF THE APPLICANT IN CONNECTION WITH THE ABOVEMENTIONED CHARGES. THE BOARD LISTED THE MATTER FOR HEARING ON DECEMBER 22, 1970. THE PURPOSE OF THE HEARING WAS:

"TO RECEIVE REPRESENTATIONS ON WHETHER THE COUNCIL OF CONCRETE-FORMING TRADE UNIONS HAS STATUS TO REQUEST THE BOARD (A) TO RECONSIDER ITS DECISION OF MAY 27, 1970 AND REVOKE THE CERTIFICATE GRANTED TO THE CANADIAN UNION OF CONSTRUCTION WORKERS, (B) TO GRANT LEAVE TO THE COUNCIL OF CONCRETE-FORMING TRADE UNIONS TO PRESENT EVIDENCE AND ARGUMENT IN CONNECTION WITH ALL ISSUES ARISING OUT OF THE ALLEGATIONS AND INFORMATION CONTAINED IN LETTERS RECEIVED BY THE BOARD FROM THE COUNCIL OF CONCRETE-FORMING TRADE UNIONS ON NOVEMBER 26, AND DECEMBER 4, 1970."

5. ON DECEMBER 21, 1970, THE BOARD RECEIVED ANOTHER LETTER FROM THE COUNCIL CONTAINING A CARBON COPY OF A DULY COMPLETED APPLICATION FOR MEMBERSHIP IN A TRADE UNION WITHIN THE COUNCIL WHICH IS DATED APRIL 13, 1970. THE ORIGINAL OF THE APPLICATION FOR MEMBERSHIP WAS ON FILE WITH THE BOARD IN ANOTHER APPLICATION FOR CERTIFICATION INVOLVING THE PRESENT APPLICANT AND THE COUNCIL. HOWEVER, IT WAS CONCEDED BY THE COUNSEL FOR THE COUNCIL THAT THE PERSON WHO HAD SIGNED THE APPLICATION FOR MEMBERSHIP IN THE COUNCIL WAS NEITHER IN THE EMPLOY OF THE RESPONDENT AT THE TIME THE APPLICATION WAS MADE NOR AT THE TIME OF THE GRANTING OF THE CERTIFICATE TO THE APPLICANT. HE CONTENDED, HOWEVER, THAT HE WAS IN THE EMPLOY OF THE RESPONDENT AT THE TIME OF THE HEARING ON DECEMBER 22, 1970.

6. IT WAS NOT CONTENDED BY COUNSEL FOR THE COUNCIL THAT THE ACT OF SENDING A TELEGRAM TO THE BOARD ON MAY 14, 1970, IN ITSELF CONFERRED STATUS ON THE COUNCIL TO BRING THE ALLEGATIONS OF IRREGULAR OR IMPROPER CONDUCT AGAINST THE APPLICANT AND THE RESPONDENT. RATHER, COUNSEL ADOPTED THE POSITION THAT ASSUMING THE PERSON FOR WHOM THE EVIDENCE OF MEMBERSHIP WAS FILED WAS WORKING FOR THE RESPONDENT, THEN, SUCH PERSON WOULD BE AFFECTED BY THE CERTIFICATE GRANTED TO THE APPLICANT AND WOULD BE INTERESTED IN PROCEEDINGS BEFORE THE BOARD. THEREFORE, COUNSEL FOR THE COUNCIL ARGUED, SINCE IT REPRESENTED A PERSON WHO WOULD BE AFFECTED BY THE CERTIFICATE, IT OUGHT TO BE MADE A PARTY TO THE PROCEEDING.

7. COUNSEL FOR THE COUNCIL ARGUED THAT THE BOARD OUGHT TO APPRECIATE THE SERIOUS NATURE OF THE ALLEGATIONS MADE BY THE COUNCIL,

NAMELY THAT THE ALLEGATIONS CONCERNING FORM 54 AND THE NON-PAYMENT OF MONIES ON ACCOUNT OF APPLICATIONS FOR MEMBERSHIP CONSTITUTED A FRAUD ON THE BOARD. HE POINTED OUT THAT THE METHODS BY WHICH THE APPLICANT IS ALLEGED TO HAVE OBTAINED ITS MEMBERSHIP HAVE BEEN PRACTISED IN SEVERAL APPLICATIONS FOR CERTIFICATION FILED WITH THE BOARD. COUNSEL RELIED HEAVILY ON SECTION 44 OF THE LABOUR RELATIONS ACT AND SECTION 54 OF THE BOARD'S RULES OF PROCEDURE. SECTION 44 OF THE LABOUR RELATIONS ACT READS AS FOLLOWS:

"IF A TRADE UNION HAS OBTAINED A CERTIFICATE BY FRAUD, THE BOARD MAY AT ANY TIME DECLARE THAT THE TRADE UNION NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT AND, UPON THE MAKING OF SUCH A DECLARATION, THE TRADE UNION IS NOT ENTITLED TO CLAIM ANY RIGHTS OR PRIVILEGES FLOWING FROM CERTIFICATION AND, IF IT HAS MADE A COLLECTIVE AGREEMENT BINDING UPON THE EMPLOYEES IN THE BARGAINING UNIT, THE COLLECTIVE AGREEMENT IS VOID."

SECTION 54 OF THE BOARD'S RULES OF PROCEDURE READS AS FOLLOWS:

"THE BOARD MAY DIRECT THAT ANY PERSON BE ADDED AS A PARTY TO A PROCEEDING OR BE SERVED WITH ANY DOCUMENT, AS THE BOARD THINKS ADVISABLE."

8. COUNSEL FOR THE COUNCIL POINTED OUT THAT SECTION 44 OF THE LABOUR RELATIONS ACT DOES NOT STATE WHO MAY MAKE AN APPLICATION TO THE BOARD TO SET ASIDE A CERTIFICATE OBTAINED BY FRAUD AND THAT THE LEGISLATURE HAD NOT SEEN FIT TO IMPOSE ANY TIME RESTRICTION ON WHEN SUCH AN APPLICATION MAY BE MADE. HE CONTRASTED SECTION 44 WITH SEVERAL OTHER SECTIONS OF THE ACT WHEREIN THE PARTY WHO MAY INITIATE A PROCEEDING BEFORE THE BOARD IN ANY GIVEN CIRCUMSTANCE IS CLEARLY STATED. COUNSEL EMPHASIZED THAT UNDER SECTION 54 OF THE BOARD'S RULES OF PROCEDURE, IT IS OPEN TO THE BOARD TO ADD THE COUNCIL AS A PARTY TO THIS PROCEEDING, PARTICULARLY IN VIEW OF THE SERIOUSNESS OF THE CHARGES.

9. THE ARGUMENT OF COUNSEL FOR THE COUNCIL REGARDING THE DISCRETION OF THE BOARD UNDER SECTION 54 OF ITS RULES OF PROCEDURE IS PREDICATED UPON THE ASSUMPTION THAT THERE IS PRESENTLY A PROCEEDING BEFORE THE BOARD TO WHICH THE COUNCIL MAY BE MADE A PARTY. WE ARE IN COMPLETE DISAGREEMENT WITH THIS ASSUMPTION BY COUNSEL FOR THE COUNCIL. IN OUR OPINION, THE PROCEEDING IN WHICH THE APPLICANT APPLIED FOR CERTIFICATION WAS COMPLETED UPON THE GRANTING OF THE CERTIFICATE TO THE APPLICANT ON MAY 27, 1970. THERE IS THEREFORE NO PROCEEDING IN THESE CIRCUMSTANCES TO WHICH THE COUNCIL MAY BE ADDED AS A PARTY. THE COUNCIL WAS AT ALL TIMES AND REMAINS A STRANGER TO THE SAID PROCEEDING.

10. THE HEARING IN THIS CASE WAS FOR THE PURPOSE OF PROVIDING AN OPPORTUNITY TO THE COUNCIL TO SHOW CAUSE WHY THE ORIGINAL PROCEEDING SHOULD BE RE-OPENED. THIS THE COUNCIL HAS FAILED TO DO SINCE IT FAILED TO ESTABLISH THAT IT HAD STATUS TO BE ADDED AS A PARTY AT THE TIME OF THE DECISION OF THE BOARD ON MAY 27, 1970. THE FILING OF EVIDENCE OF MEMBERSHIP ON DECEMBER 21, 1970 DOES NOT GIVE THE COUNCIL STATUS TO CHALLENGE THE DECISION OF THE BOARD CERTIFYING THE APPLICANT IN THIS CASE.

11. THERE REMAINS FOR CONSIDERATION THE QUESTION OF WHETHER A STRANGER TO A PROCEEDING MAY BE HEARD TO ALLEGE FRAUD AND INVOKE THE PROVISIONS OF SECTION 44 OF THE LABOUR RELATIONS ACT. IN THIS CASE THE COUNCIL SOUGHT TO ESTABLISH AN INTEREST IN A PROCEEDING WHICH HAD BEEN COMPLETED ALMOST SEVEN MONTHS BEFORE IT FILED EVIDENCE OF MEMBERSHIP FOR A PERSON WHO WAS ALLEGEDLY IN THE EMPLOY OF THE RESPONDENT AT THE TIME OF THE HEARING ON DECEMBER 22, 1970. THE BOARD IS OF THE OPINION THAT THE COUNCIL REMAINS A STRANGER TO THE PROCEEDING WHICH WAS COMPLETED ON MAY 27, 1970 AND THAT IT HAS NOT, BY THE FILING OF EVIDENCE OF MEMBERSHIP ON DECEMBER 21, 1970, ESTABLISHED THAT IT HAS AN INTEREST SO AS TO ENABLE IT TO REQUEST LEAVE FROM THE BOARD TO ADDUCE EVIDENCE IN SUPPORT OF CHARGES OF FRAUD AGAINST THE APPLICANT AND OF IMPROPER OR IRREGULAR CONDUCT AGAINST THE APPLICANT AND THE RESPONDENT.

12. THE BOARD AFFIRMS ITS DECISION DATED MAY 27, 1970.

18063-70-R: INTERNATIONAL UNION OF DOLL & TOY WORKERS OF THE U.S.A. & CANADA, LOCAL 905 (APPLICANT) v. IRWIN TOY LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

- AND -

18064-70-R: INTERNATIONAL UNION OF DOLL & TOY WORKERS OF THE U.S.A. & CANADA, LOCAL 905 (APPLICANT) v. IRWIN TOY LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS F. W. MURRAY AND P. J. O'KEEFFE.

APPEARANCES AT THE HEARING: J. WATERMAN, V. KNAP AND K. COUTLEE FOR THE APPLICANT, C. R. OSLER, Q.C., A.D.G. PURDY, L. BOARETTI AND J. BLACKLAW FOR THE RESPONDENT, M. MACKAY, S. L. CORKE, G. MACKAY AND J. VARAO FOR THE OBJECTORS.

DECISION OF J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBER P. J. O'KEEFFE: FEBRUARY 2, 1971.

1. THIS MATTER WAS LISTED FOR CONTINUATION OF HEARING ON DECEMBER 30, 1970 FOR THE PURPOSE OF INQUIRING INTO THE ORIGINATION, PREPARATION AND CIRCULATION OF THE STATEMENTS OF DESIRE (HEREINAFTER

REFERRED TO AS PETITIONS) FILED WITH THE BOARD EXPRESSING OPPOSITION TO THE INSTANT APPLICATION. THE PURPOSE OF THE HEARING WAS ALSO TO ENTERTAIN EVIDENCE RELATING TO THE CHARGES FILED BY THE APPLICANT ALLEGING MANAGEMENT SUPPORT FOR THE PETITIONS.

2. MARVIN MACKAY, A LEAD HAND IN THE EMPLOY OF THE RESPONDENT, GAVE THE FOLLOWING TESTIMONY RELATING TO THE PETITIONS. HE PREPARED AND TYPED THE TWO PETITIONS IN THE ENGLISH LANGUAGE AND THE TWO PETITIONS IN THE PORTUGUESE LANGUAGE. ANOTHER EMPLOYEE, JOHN VARAO, TRANSLATED THE "HEADINGS" APPEARING ON THE PORTUGUESE PETITIONS INTO THAT LANGUAGE. MACKAY SECURED AND WITNESSED ALL OF THE SIGNATURES APPEARING ON THE FOUR PETITIONS. HE WAS ASSISTED IN THIS ENDEAVOUR AT VARIOUS TIMES BY VARAO, SYDNEY CORKE AND GORDON MACKAY, ALL OF WHOM ARE FELLOW EMPLOYEES. GORDON MACKAY IS ALSO HIS BROTHER. MACKAY SECURED THE SIGNATURES ON THE PETITIONS OVER A PERIOD OF FOUR DAYS. IT WOULD APPEAR THAT HE SECURED MOST OF THE SIGNATURES OF MOST OF THE ENGLISH SPEAKING EMPLOYEES ON THURSDAY AND FRIDAY, JULY 8TH AND 9TH. HE HANDED OUT A LEAFLET WHICH HE HAD PREPARED AND HAD HAD TRANSLATED INTO THE PORTUGUESE LANGUAGE TO THE PORTUGUESE SPEAKING EMPLOYEES AS THEY ENTERED THE PLANT ON THE MORNING OF MONDAY, JULY 13, 1970. THE LEAFLET EXPLAINED THE PURPOSE OF THE PETITIONS HE WAS CIRCULATING. IT WOULD SEEM THAT MACKAY SOLICITED AND SECURED THE SIGNATURES OF MOST OF THE PORTUGUESE SPEAKING EMPLOYEES ON THE SAME MONDAY AND ON TUESDAY, JULY 14, 1970. HE SECURED THE VAST MAJORITY OF SIGNATURES OUTSIDE THE PLANT PRIOR TO AND AFTER WORKING HOURS OR DURING BREAK PERIODS. HE SECURED A FEW SIGNATURES AT HIS HOME AND IN OTHER LOCATIONS OUTSIDE THE PLANT. IN THE AFTERNOON OF JULY 14TH, DURING HIS BREAK PERIOD, MACKAY LEFT THE PLANT WITHOUT PERMISSION AND BY REGISTERED MAIL SENT THE PETITIONS TO THE BOARD. MACKAY HAD NO CONVERSATIONS WITH ANY MEMBERS OF MANAGEMENT ABOUT THE PETITIONS OR THE CERTIFICATION APPLICATION OF THE UNION. NO MEMBERS OF MANAGEMENT WERE IN ATTENDANCE WHEN HE SECURED ANY OF THE SIGNATURES. HE DID NOT ATTEND ANY MEETINGS OF EMPLOYEES WHERE ANY MEMBER OR MEMBERS OF MANAGEMENT ADDRESSED THE EMPLOYEES.

3. THERE IS NO DISPUTE THAT THERE WAS IN FACT A MEETING OF THE EMPLOYEES CALLED BY MANAGEMENT WHICH WAS HELD DURING THE LAST FIFTEEN MINUTES OF THE WORKING DAY ON MONDAY, JULY 6, 1970, IN THE PLANT. WILLIAM DROUIN, THE PRODUCTION MANAGER, ADDRESSED THE MEETING IN ENGLISH AND HIS REMARKS WERE INTERPRETED INTO PORTUGUESE FOR THE BENEFIT OF THE PORTUGUESE SPEAKING EMPLOYEES BY VIRGINIO BRANCO, A FOREMAN IN THE EMPLOY OF THE RESPONDENT.

4. FIVE PORTUGUESE SPEAKING FEMALE EMPLOYEES, NAMELY ESTRELA COSTA, MARIA PECHICO, ERMALINDA PECHICO, OLIVIA MADIEROS AND LUCIA ANDRADE, ALL WITH SOME SMALL VARIATIONS, GAVE THE SAME ACCOUNT AS TO WHAT TRANSPIRED AT THE MEETING. ACCORDING TO THEIR TESTIMONY, DROUIN TOLD THE EMPLOYEES THAT THE COMPANY WAS AWARE OF THE UNION'S

ORGANIZING CAMPAIGN AND THAT SOME OF THEM HAD JOINED THE UNION. DROUIN CAUTIONED THEM NOT TO BELIEVE EVERYTHING THAT THE UNION TOLD THEM AND, AT THE VERY LEAST, SUGGESTED THAT THE UNION WOULD NOT FULFIL ITS PROMISES. HE TOLD THEM THAT IF THEY WANTED TO WITHDRAW THEIR SUPPORT FOR THE APPLICANT UNION THEY SHOULD SEE PAULA CARDOSA, THE SECRETARY TO THE PERSONNEL MANAGER IN THE OFFICE, WHO HAD A PAPER WHICH THEY COULD SIGN FOR THIS PURPOSE. THE FIVE FEMALE EMPLOYEES TESTIFIED THAT THEY DID NOT GO TO SEE PAULA.

5. THE EVIDENCE OF DROUIN HIMSELF IS THAT HE ADDRESSED THE MEETING AND THAT BRANCO ACTED AS AN INTERPRETER FOR THE PORTUGUESE SPEAKING EMPLOYEES. DROUIN'S TESTIMONY, IN SUMMARY, IS THAT HE TOLD THE EMPLOYEES THAT THE MEETING WAS CALLED AS A RESULT OF INQUIRIES BEING MADE BY INDIVIDUAL EMPLOYEES CONCERNING THE UNION'S ORGANIZING CAMPAIGN. HE TOLD THEM THAT IT WAS THEIR INDIVIDUAL CHOICE AS TO WHETHER OR NOT THEY SUPPORTED THE APPLICANT UNION AND THAT THE COMPANY COULD NOT MAKE THE CHOICE FOR THEM. HE RECOMMENDED, HOWEVER, THAT BEFORE COMMITTING THEMSELVES TO THE UNION THEY SHOULD SEEK THE ADVICE OF THEIR PARENTS, HUSBANDS AND FRIENDS. DROUIN CATEGORICALLY DENIED THAT HE IN ANY WAY TOLD THE ASSEMBLED EMPLOYEES THAT IF THEY WANTED TO WITHDRAW THEIR SUPPORT FROM THE UNION THEY SHOULD SEE PAULA CARDOSO IN THE OFFICE. THE EVIDENCE OF BRANCO AND JOHN SERVICIO, ANOTHER FOREMAN (WHO ALSO BRIEFLY ACTED AS AN INTERPRETER FOR DROUIN) AND MARIA MEDEIROS, A LINE LEADER, IN ALL ESSENTIAL RESPECTS SUPPORTS THE TESTIMONY OF DROUIN.

6. THE EVIDENCE OF WILLIAM DROUIN, JR., THE SON OF THE PRODUCTION MANAGER AND WHO IS HIMSELF A PRODUCTION FOREMAN, IS AT VARIANCE ON SOME MATTERS WITH THE EVIDENCE OF HIS FATHER. WILLIAM DROUIN, SR., TESTIFIED THAT AT THE CONCLUSION OF HIS REMARKS HE ASKED THE EMPLOYEES IF THEY HAD ANY QUESTIONS BUT THAT NONE OF THEM HAD ANY QUESTIONS. ACCORDING TO THE TESTIMONY OF WILLIAM DROUIN, JR., HIS FATHER TOLD THE EMPLOYEES AT THE MEETING THAT "HIS DOOR WAS OPEN" IF THEY HAD ANY QUESTIONS AND TO SEE HIM IF THEY "CHANGED THEIR MIND". ACCORDING TO DROUIN, JR., HIS FATHER ALSO TOLD THE EMPLOYEES THAT THEY COULD "TALK TO PAULA".

7. IT SEEMS FROM THE EVIDENCE THAT MANAGEMENT EITHER ON THE OCCASION OF THE JULY 6TH MEETING OR SOME TIME THEREAFTER ADVISED THE EMPLOYEES THAT THERE WOULD BE A FURTHER MEETING ON JULY 7, 1970. IT IS NOT CLEAR FROM THE EVIDENCE FOR WHAT PURPOSE THE RESPONDENT SCHEDULED A SECOND MEETING. ACCORDING TO DROUIN, SR., AND THE PERSONNEL MANAGER JAMES BLACKLAW, THE ONLY REASON THE COMPANY DECIDED TO HOLD THE FIRST MEETING WAS TO ADVISE THE EMPLOYEES OF THEIR RIGHTS, THAT IS, THE COMPANY FELT THE EMPLOYEES SHOULD BE TOLD THAT IT WAS A VOLUNTARY CHOICE ON THEIR PART AS TO WHETHER OR NOT THEY JOINED AND SUPPORTED THE UNION. IN ANY EVENT, THE MEETING SCHEDULED FOR JULY 7TH WAS CANCELLED. ON THAT DAY, THE RESPONDENT RECEIVED OFFICIAL NOTICE FROM THE BOARD OF THE APPLICANT'S APPLICATION FOR CERTIFICATION WHICH WAS MADE ON JULY 6, 1970. ACCORDING TO THE EVIDENCE, THE RESPONDENT

WAS ADVISED, BY A SOURCE WHICH WAS NOT IDENTIFIED, TO CANCEL THE SECOND MEETING LEST IT BE INTERPRETED AS COMPANY "INTERFERENCE". DROUIN, SR., HIMSELF, UNDERTOOK TO ADVISE THE PORTUGUESE SPEAKING FEMALE EMPLOYEES WORKING ON THE ASSEMBLY LINE OF THE CANCELLATION OF THE MEETING. HE DID SO IN THE EARLY AFTERNOON OF JULY 7TH AND WAS ACCOMPANIED BY PAULA CARDOSO WHO ACTED AS HIS INTERPRETER.

8. THE EVIDENCE OF MARIA PECHICO, ESTRELA COSTA, ERMALINDA PECHICO AND LUCIA ANDRADE IS THAT WHEN DROUIN CAME TO THE "LINE" ON THE AFTERNOON OF JULY 7TH HE TOLD THEM, USING PAULA CARDOSO AS AN INTERPRETER, THAT THE MEETING SCHEDULED FOR LATER THAT DAY WAS CANCELLED, BUT THAT THOSE EMPLOYEES WHO WANTED TO SIGN AGAINST THE UNION SHOULD SEE PAULA IN HER OFFICE FOR THAT PURPOSE. DROUIN, ON THE OTHER HAND, TESTIFIED THAT HE ONLY INFORMED THE GIRLS ON THE ASSEMBLY LINE THAT THE MEETING WAS CANCELLED SINCE THE COMPANY HAD RECEIVED NOTICE OF THE UNION'S APPLICATION FOR CERTIFICATION. HE DENIED TELLING THE GIRLS THAT THEY SHOULD SEE PAULA IN HER OFFICE IF THEY WANTED TO OPPOSE THE UNION. ACCORDING TO DROUIN'S TESTIMONY, SOME OF THE GIRLS ON THAT OCCASION SOUGHT HIS ADVICE CONCERNING THE UNION BUT THAT HE CONFINED HIMSELF TO DIRECTING THEIR ATTENTION TO THE NOTICE TO EMPLOYEES POSTED IN THE CAFETERIA.

9. PAULA CARDOSO TESTIFIED THAT SHE INTERPRETED THE REMARKS MADE BY DROUIN TO THE PORTUGUESE SPEAKING FEMALE EMPLOYEES ON THE ASSEMBLY LINE ON THE AFTERNOON OF JULY 7TH. HER EVIDENCE-IN-CHIEF CORROBORATES THAT OF DROUIN, EXCEPT THAT SHE WENT ON TO TESTIFY THAT DROUIN TOLD THE GIRLS THAT IF THEY WANTED ANY FURTHER EXPLANATION (PRESUMABLY ON MATTERS RELATING TO THE UNION) THEY COULD SEE HER (PAULA) IN THE OFFICE. IN CROSS-EXAMINATION, HOWEVER, PAULA CARDOSO CHANGED HER TESTIMONY TO SAY THAT SHE, ON HER OWN INITIATIVE, RATHER THAN DROUIN, MADE THE LATTER STATEMENT. PAULA CARDOSO DENIED, HOWEVER, THAT EITHER SHE OR DROUIN TOLD THE GIRLS THAT THERE WAS A PAPER IN HER OFFICE WHICH THEY COULD SIGN IF ANY OF THE EMPLOYEES WANTED TO EXPRESS THEIR OPPOSITION TO THE UNION.

10. THE BOARD IS CONFRONTED WITH GLARING AND TOTALLY IRRECONCILABLE CONFLICTS IN THE TESTIMONY OF THE FIVE PORTUGUESE SPEAKING FEMALE EMPLOYEES ON THE ONE HAND AND THAT OF DROUIN, SR., AND OTHER MEMBERS OF MANAGEMENT ON THE OTHER. THE BOARD'S DECISION AS TO WHETHER OR NOT IT IS PREPARED TO ACCEPT THE PETITIONS AS A VOLUNTARY EXPRESSION OF THE TRUE WISHES OF THE PERSONS WHO SIGNED THEM IN LARGE MEASURE IS DEPENDENT UPON THE BOARD'S FINDING WITH RESPECT TO THE DIFFICULT ISSUE OF CREDIBILITY WITH WHICH IT IS CONFRONTED. THE BOARD ACCORDINGLY HAS CAREFULLY ANALYZED ALL OF THE RELEVANT EVIDENCE ADDUCED AT THE HEARING.

11. IN ASSESSING THE EVIDENCE OF THE FIVE PORTUGUESE SPEAKING FEMALE EMPLOYEES, WE NECESSARILY HAD TO TAKE INTO ACCOUNT THE FACT

THAT THEY GAVE THEIR TESTIMONY THROUGH AN INTERPRETER AND OBVIOUSLY WERE NOT FAMILIAR WITH EITHER THE CERTIFICATION PROCEDURE OR THE NOMENCLATURE OF LABOUR RELATIONS. BY AND LARGE THE EVIDENCE OF EACH OF THEM IN EXAMINATION-IN-CHIEF AND CROSS-EXAMINATION WAS CONSISTENT. MOREOVER, THE EVIDENCE OF ALL FIVE OF THEM WAS VERY SIMILAR IN ALL ESSENTIAL RESPECTS. FINALLY, HAVING REGARD TO THEIR Demeanour AND THE MANNER IN WHICH THEY ANSWERED ALL OF THE QUESTIONS PUT TO THEM, WE FIND THEIR TESTIMONY LACKING IN ANY TRACE OF GUILF. IN OTHER WORDS, BASED SOLELY ON THEIR OWN EVIDENCE, WE FIND NO REASON WHY IT SHOULD NOT BE ACCEPTED AT FACE VALUE. WE ARE COGNIZANT NONETHELESS OF THE FORMIDABLE AND COMPELLING EVIDENCE ADDUCED BY THE RESPONDENT WHICH, IF ACCEPTED, EFFECTIVELY REFUTES THE EVIDENCE ADDUCED BY THE APPLICANT. THE EVIDENCE GIVEN BY MEMBERS OF MANAGEMENT OF THE RESPONDENT, HOWEVER, RAISES A NUMBER OF QUESTIONS AND DOUBTS IN OUR MIND WHICH ARE DEALT WITH BELOW.

12. BOTH DROUIN AND BLACKLAW TESTIFIED THAT MANAGEMENT, WHEN IT BECAME AWARE OF THE UNION'S ORGANIZING CAMPAIGN, (AND WE ASSUME THEY MUST HAVE REASONABLY EXPECTED THAT THE APPLICATION FOR CERTIFICATION WAS IMMINENT) HELD A MEETING FOR THE PURPOSE OF DECIDING UPON THE POSITION WHICH THE COMPANY SHOULD ADOPT IN RELATION TO THE UNION. THE EVIDENCE OF DROUIN AND BLACKLAW IS THAT THE COMPANY DECIDED THAT IT SHOULD CALL A MEETING OF THE EMPLOYEES FOR THE PURPOSE OF MAKING SURE THAT THEY KNEW THEY HAD A FREE CHOICE TO DECIDE WHETHER OR NOT THEY WANTED TO SUPPORT THE APPLICANT UNION. ACCORDING TO DROUIN, IN HIS ADDRESS TO THE EMPLOYEES AT THE MEETING ON JULY 6TH HE DID NO MORE THAN CONVEY THIS MESSAGE TO THE EMPLOYEES. IF, IN FACT, THIS WAS THE SOLE OBJECT OF THE COMPANY IN REGARD TO THE UNION, AND IT WAS ACCOMPLISHED AT THAT MEETING, WE FIND IT DIFFICULT TO UNDERSTAND WHY THE COMPANY SCHEDULED A SECOND MEETING WITH THE EMPLOYEES ON JULY 7TH. NO ADEQUATE ANSWER WAS OFFERED BY DROUIN OR BLACKLAW.

13. WHEN THE COMPANY DECIDED TO CANCEL THE SECOND SCHEDULED MEETING ON RECEIPT OF THE NOTICE OF THE APPLICATION FOR CERTIFICATION, IT SEEMS RATHER UNUSUAL TO US THAT THE PRODUCTION MANAGER, WHO DID NOT SPEAK THE PORTUGUESE LANGUAGE, SHOULD TAKE IT UPON HIMSELF TO ADVISE THE PORTUGUESE SPEAKING FEMALE EMPLOYEES ON THE ASSEMBLY LINES THAT THE SCHEDULED MEETING FOR THAT DAY WAS CANCELLED. ONE WOULD HAVE THOUGHT THAT HE WOULD HAVE DELEGATED THIS SIMPLE TASK TO THE IMMEDIATE SUPERVISORY STAFF OF THE EMPLOYEES. ALTERNATIVELY, SINCE HE PERSONALLY CONVEYED THIS INFORMATION TO THE PORTUGUESE SPEAKING FEMALE EMPLOYEES ON THE "LINES", ONE WOULD HAVE THOUGHT THAT HE WOULD HAVE DONE THE SAME FOR THE ENGLISH SPEAKING EMPLOYEES. WHILE WE HAVE NO DIRECT EVIDENCE AS TO HOW THE ENGLISH SPEAKING EMPLOYEES WERE INFORMED THAT THE MEETING SCHEDULED FOR JULY 7TH WAS CANCELLED, THERE WAS NO SUGGESTION THAT DROUIN PERSONALLY TOLD THEM.

14. DROUIN, SR., TESTIFIED THAT HE ONLY ASKED THE EMPLOYEES AT

THE MEETING WHETHER THEY HAD ANY QUESTIONS AND SPECIFICALLY DENIED THAT HE SAID ANYTHING ABOUT EMPLOYEES SEEING PAULA CARDOSO. HIS EVIDENCE IN THIS REGARD IS LARGELY SUPPORTED BY THAT OF BRANCO, SERVICIO AND MARIA MEDEIROS. YET THE EVIDENCE OF HIS SON WILLIAM DROUIN, JR., WHO IS A PRODUCTION FOREMAN, IN PART AT LEAST SEEMS TO CONTRADICT THAT OF HIS FATHER AND AT THE SAME TIME LENDS SOME SUPPORT TO THE EVIDENCE OF THE FIVE PORTUGUESE SPEAKING EMPLOYEES. IN OUR VIEW, THE EVIDENCE OF DROUIN, JR., ON WHAT WE CONSIDER TO BE A MATERIAL MATTER CANNOT LIGHTLY BE DISREGARDED.

15. FINALLY, WE FIND THE EVIDENCE OF PAULA CARDOSO CONCERNING THE CONVERSATION WITH THE PORTUGUESE SPEAKING GIRLS ON THE ASSEMBLY LINE ON THE AFTERNOON OF JULY 7, 1970 TO BE MORE THAN A LITTLE DISCONCERTING. IN PARTICULAR, WE ARE REFERRING TO HER EVIDENCE IN EXAMINATION-IN-CHIEF WHERE SHE ORIGINALLY TESTIFIED THAT DROUIN TOLD THE GIRLS TO SEE HER IF THEY HAD ANY QUESTIONS, BUT SUBSEQUENTLY ALTERED THAT EVIDENCE IN CROSS-EXAMINATION TO SAY THAT IT WAS SHE RATHER THAN DROUIN WHO HAD ISSUED THE INVITATION. WE ARE INCLINED TO ACCEPT HER FIRST STATEMENT AS BEING THE MORE ACCURATE OF THE TWO. LIKE THE TESTIMONY OF WILLIAM DROUIN, JR., PAULA CARDOSO'S TESTIMONY ON THE ABOVE MATERIAL POINT TENDS TO LEND SOME SUPPORT TO THE EVIDENCE OF THE FIVE PORTUGUESE SPEAKING FEMALE EMPLOYEES.

16. HAVING REGARD TO ALL OF THE EVIDENCE, WE PREFER AND ACCEPT THE EVIDENCE OF THE FIVE PORTUGUESE SPEAKING WITNESSES CALLED BY THE APPLICANT OVER THE TESTIMONY OF DROUIN AND THE OTHER MEMBERS OF MANAGEMENT WHO GAVE CORROBORATIVE EVIDENCE. HAVING REACHED THIS CONCLUSION ON THE EVIDENCE, WE FIND THAT THE CONDUCT OF THE RESPONDENT WAS BOUND TO HAVE SO INFLUENCED THE EMPLOYEES AND IN PARTICULAR THOSE OF PORTUGUESE ORIGIN THAT IT COULD NOT HAVE DONE OTHER THAN IMPAIR THEIR ABILITY TO MAKE AN INDEPENDENT DECISION AS TO WHETHER THEY WISHED TO BE REPRESENTED BY THE APPLICANT UNION. IN THE RESULT, WE DO NOT ACCEPT THE PETITIONS SUBSEQUENTLY CIRCULATED BY MACKAY AS REPRESENTING A VOLUNTARY EXPRESSION OF THE TRUE WISHES OF THE EMPLOYEES WHO SIGNED THEM. THE PETITIONS ACCORDINGLY DO NOT CAST DOUBT ON THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT TO CAUSE THE BOARD TO SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE (SEE PIGOTT MOTORS (1961) LTD. CASE 63 CLLC 1125).

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18. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER F. W. MURRAY: FEBRUARY 2, 1971.

1. I DISSENT.

2. IN THE LIGHT OF ALL OF THE EVIDENCE IN THIS CASE I WOULD HAVE FOUND THAT THE PETITION FILED BY THE PETITIONERS BE GIVEN WEIGHT AND ACCORDINGLY THAT IT CAST DOUBT ON THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT AS TO THE WISHES OF THE EMPLOYEES. ACCORDINGLY, I WOULD HAVE ORDERED THAT A REPRESENTATION VOTE BE TAKEN.

18245-70-R: THE CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. CALVERT-DALE ESTATES LIMITED (RESPONDENT).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND J.E.C. ROBINSON, Q.C..

APPEARANCES AT THE HEARING: VINCENT McMANUS AND GEO. MILLER FOR THE APPLICANT; JOHN P. SANDERSON AND W.R. PIERSON FOR THE RESPONDENT.

DECISION OF O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBER J.E.C. ROBINSON, Q.C.: FEBRUARY 18, 1971.

1. THE APPLICANT SEEKS TO BE CERTIFIED FOR VARIOUS SATATIONARY ENGINEERS WHO ARE EMPLOYED BY THE RESPONDENT. THE RESPONDENT RAISED A PRELIMINARY OBJECTION AND STATES THAT PURSUANT TO SECTION 2(c) OF THE LABOUR RELATIONS ACT THAT THE STATIONARY ENGINEERS ARE PERSONS EMPLOYED IN HORTICULTURE BY AN EMPLOYER WHOSE PRIMARY BUSINESS IS HORTICULTURE. SECTION 2(c) OF THE LABOUR RELATIONS ACT PROVIDES:

2. THIS ACT DOES NOT APPLY,

(c) TO A PERSON,...WHO IS EMPLOYED
IN HORTICULTURE BY AN EMPLOYER
WHOSE PRIMARY BUSINESS IS...
HORTICULTURE.

2. THIS APPLICATION HAS BEEN HELD IN ABEYANCE AS A RESULT OF THE BOARD'S DECISION IN THE CEDARVALE TREE SERVICES LTD. CASE, FEBRUARY 1970, OLRB, MTHLY. REP., 1035. IN THAT CASE AN APPLICATION BY WAY OF CERTIORARI TO QUASH THE BOARD'S DECISION WAS BROUGHT IN THE SUPREME COURT OF ONTARIO AND HEARD BY WRIGHT J. THERE IS PRESENTLY BOTH AN APPEAL AND CROSS-APPEAL FROM THE DECISION OF WRIGHT J. TO THE ONTARIO COURT OF APPEAL. WE HAD HELD THIS MATTER IN ABEYANCE WITH THE HOPE THAT A DECISION BY THE ONTARIO COURT OF APPEAL WOULD BE OF ASSISTANCE IN DECIDING THIS APPLICATION. HOWEVER, THE APPEAL HAS NOT BEEN PERFECTED AND IT APPEARS THAT IT WILL BE SOME TIME BEFORE THE APPEAL WILL BE HEARD AND DECIDED BY THE COURT; AND WE ARE CONCERNED THAT HOLDING THIS MATTER IN ABEYANCE FOR A FURTHER PERIOD MAY BE A DISSERVICE TO THE PARTIES. ACCORDINGLY, WE ARE OF THE OPINION THAT WE SHOULD RENDER A DECISION AT THIS TIME.

3. THE APPLICANT ADMITS THAT THE RESPONDENT IS AN EMPLOYER WHOSE PRIMARY BUSINESS IS HORTICULTURE AND THE ONLY QUESTION TO BE DECIDED IS WHETHER OR NOT THE STATIONARY ENGINEERS ARE ALSO EMPLOYED IN HORTICULTURE WITHIN THE MEANING OF THE ACT.

4. THE COMPANY HAS TWO RETAIL OUTLETS WITH TOTAL SALES THAT ARE LESS THAN TWO PER CENT OF THE COMPANY'S OVERALL SALES. IN ADDITION, THE COMPANY HAS TWO GREENHOUSES CONTAINING APPROXIMATELY ONE MILLION THREE HUNDRED AND SEVEN THOUSAND SQUARE FEET OF GREENHOUSE. THE STATIONARY ENGINEERS OPERATE THE BOILERS WHICH ARE USED TO HEAT THE GREENHOUSES, TO PASTEURIZE AND STERILIZE THE SOIL AND TO CONTROL THE TEMPERATURE. HAVING REGARD TO THE EVIDENCE AND THE ARGUMENT WE ARE SATISFIED THAT ALTHOUGH THE STATIONARY ENGINEERS ENGAGE IN A MECHANICAL PROCESS THAT THEIR FUNCTION IS ALLIED TO AND FORMS AN INTEGRAL AND VITAL PART OF THE GREENHOUSE OPERATION, AND THEIR WORK IS ESSENTIAL TO THE PRODUCTION AND GROWTH OF PLANTS AND FLOWERS, AND ACCORDINGLY THE STATIONARY ENGINEERS ARE EMPLOYED IN HORTICULTURE. CF DI GIORGIO FRUIT CORPORATION 1948 80 NLRB 853.

5. THE APPLICATION IS THEREFORE DISMISSED.

DISSENT OF BOARD MEMBER OLIVER HODGES: FEBRUARY 18, 1971.

1. I DISSENT.

2. IN MY OPINION THE EXCLUSIONS CONTEMPLATED UNDER "HORTICULTURE", AS EXPRESSED BY SECTION 2(c) OF THE LABOUR RELATIONS ACT, WERE NOT INTENDED BY THE LEGISLATURE TO APPLY TO STATIONARY ENGINEERS PERFORMING THEIR NORMAL DUTIES FOR WHICH THEY REQUIRE A CERTIFICATE UNDER THE OPERATING ENGINEERS ACT OF ONTARIO.

3. THE STATIONARY ENGINEERS IN THE INSTANT CASE PERFORM THE SAME MECHANICAL FUNCTION OF PRODUCING STEAM WITH BOILERS AND EQUIPMENT IN THE POWER HOUSE AS DO STATIONARY ENGINEERS ELSEWHERE IN INDUSTRIAL UNDERTAKINGS WHERE CERTIFICATES CERTIFYING THE UNION HAVE BEEN GRANTED BY THE LABOUR RELATIONS BOARD.

4. I RESPECTFULLY DISAGREE WITH THE MAJORITY AND FIND THAT THESE STATIONARY ENGINEERS ARE NOT ENGAGED IN HORTICULTURE. I THEREFORE FIND, ON CAREFUL CONSIDERATION OF ALL THE EVIDENCE, THAT THE APPLICANT IS ENTITLED TO BE CERTIFIED.

18362-70-R: TORONTO TYPOGRAPHICAL UNION, No. 91 (APPLICANT) v. WILLOW PRESS (RESPONDENT) v. LOCAL #28, INTERNATIONAL BROTHERHOOD OF BOOK-BINDERS (INTERVENER #1) v. TORONTO PRINTING PRESSMEN & ASSISTANTS' UNION No. 10 (INTERVENER #2) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS J.E.C. ROBINSON, Q.C., AND E. BOYER.

APPEARANCES AT THE HEARING: ALICK RYDER AND K. E. PEATLING FOR THE APPLICANT; L. S. CRACKOWER FOR THE RESPONDENT; NO ONE APPEARING FOR INTERVENER #1; NO ONE APPEARING FOR INTERVENER #2; AND D. F. MEVRICK, Q.C. FOR THE GROUP OF EMPLOYEES.

DECISION OF THE BOARD: FEBRUARY 17, 1971.

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2. HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO ENGAGED IN COMPOSING ROOM, PRESS ROOM AND BINDERY WORK, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES APPROPRIATE FOR COLLECTIVE BARGAINING.

3. PURSUANT TO THE DECISION OF THE BOARD DATED NOVEMBER 30, 1970, THE BOARD FOUND THAT PHILIPPE LACROIX IS INCLUDED IN THE BARGAINING UNIT.

4. ACCORDINGLY, THE LIST OF NAMES OF EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT FOR PURPOSES OF THE COUNT REMAINS AT 10. THE APPLICANT HAS SUBMITTED EVIDENCE OF MEMBERSHIP FOR 6 PERSONS, ALL OF WHOSE NAMES CORRESPOND TO NAMES APPEARING ON THE RESPONDENT'S LIST.

5. THERE WAS ALSO FILED WITH THE BOARD A DOCUMENT EXPRESSING OPPOSITION TO THE INSTANT APPLICATION, HEREINAFTER REFERRED TO AS THE PETITION, BEARING THE SIGNATURES OF 7 PERSONS PURPORTING TO BE EMPLOYEES OF THE RESPONDENT, 3 OF WHOM ARE CLAIMED IN MEMBERSHIP BY THE APPLICANT. IF THE BOARD WERE TO GIVE WEIGHT TO THE PETITION, THE APPLICANT WOULD HAVE UNQUALIFIED EVIDENCE OF MEMBERSHIP FOR NOT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT REQUIRED FOR OUTRIGHT CERTIFICATION. IN VIEW OF THE RELEVANCY OF THE PETITION, THE BOARD CONDUCTED ITS USUAL INQUIRY INTO THE ORIGINATION, PREPARATION AND CIRCULATION OF THIS DOCUMENT AT A HEARING HELD ON JANUARY 11, 1971. THERE WERE ALSO CHARGES FILED BY THE APPLICANT, ALLEGING, IN EFFECT, MANAGEMENT PARTICIPATION IN CONNECTION WITH THE PETITION AND THE EVIDENCE IN THIS REGARD WAS HEARD ON FEBRUARY 2, 1971.

6. ALL SIGNATORIES ON THE PETITION WERE CALLED TO GIVE EVIDENCE IN THIS REGARD, NAMELY MESSRS. LACROIX, SWIMMER, ROHRER, COTE, NEUMANN, ROEMER AND MRS. LOEWRIKKEIT.

7. THE EVIDENCE OF LACROIX DISCLOSES THAT HE HAD PREPARED THE INTRODUCTORY PORTION OF THE PETITION WHILE ALONE IN THE RESPONDENT'S LUNCH-ROOM FOLLOWING DISCUSSIONS WITH SOME OF THE OTHER EMPLOYEES. HAVING SIGNED THE DOCUMENT HIMSELF AND HAVING OBTAINED THE SIGNATURES OF COTE, SWIMMER AND ROHRER, THE WITNESS STATED THAT HE FELT HE WAS NOT MAKING ANY HEADWAY IN RELATION TO ROEMER, NEUMANN AND MRS. LOEWRIKKEIT. ACCORDINGLY, ON SEPTEMBER 22, 1970 HE APPROACHED HELMUT JOHN FOR ASSISTANCE. IT WOULD APPEAR THAT THE LATTER IS A TENANT OF THE RESPONDENT AND OCCUPIES PART OF THE 3RD FLOOR OF THE RESPONDENT'S BUILDING. FURTHER, IT WOULD APPEAR THAT JOHN'S RELATIONSHIP WITH THE RESPONDENT IS THAT OF A SUPPLIER. IN ANY EVENT, THE WITNESS STATED THAT HE KNEW THAT THE WORK OF THE THREE EMPLOYEES WOULD OCCASIONALLY BRING THEM IN CONTACT WITH JOHN. UPON DISCUSSING THE MATTER WITH HIM, LACROIX STATED THAT JOHN AGREED TO SPEAK TO THESE THREE EMPLOYEES. THE PETITION WAS LEFT WITH JOHN AND THE WITNESS STATED THAT HE NEVER SAW IT AGAIN UNTIL THE HEARING OF THIS MATTER ON JANUARY 11, 1971. UPON CROSS-EXAMINATION, THE WITNESS ACKNOWLEDGED FOR THE FIRST TIME THAT IN FACT TWO PETITIONS WERE PREPARED AND SIGNED, ALTHOUGH HIS RECOLLECTION IN THIS REGARD WAS SOMEWHAT VAGUE.

8. IN ASSESSING THE WEIGHT TO BE GIVEN TO THE EVIDENCE OF LACROIX, THE PRIME PROPONENT OF THE PETITION, THE BOARD NOTES CERTAIN MAJOR INCONSISTENCIES WHEN COMPARED WITH THE EVIDENCE ELICITED FROM THE REMAINING PETITIONERS. LACROIX STATED THAT HE PRESENTED THE PETITION TO COTE AND WITNESSES HIS SIGNATURE AT THAT TIME. COTE'S EVIDENCE IS THAT HE SAW THE PETITION ON THE LUNCH TABLE AND WHEN HE SIGNED IT HE SPECIFICALLY RECALLED THAT NO ONE ELSE WAS PRESENT. THE EVIDENCE OF ROHRER IS THAT HE SIGNED THE PETITION AFTER WORKING HOURS AND AFTER COTE HAD PRESENTED IT TO HIM. ON THE OTHER HAND, LACROIX STATED THAT ROHRER SIGNED IT AT HIS WORK STATION IMMEDIATELY AFTER LUNCH WHEN LACROIX PRESENTED IT TO HIM. LACROIX FURTHER STATED THAT 2 PETITIONS WERE PREPARED AND SIGNED. THIS SHOULD BE CONTRASTED WITH THE EVIDENCE OF ROEMER AND MRS. LOEWRIKKEIT WHO STATED THAT THEY SIGNED ONLY ONE PETITION.

9. THE EVIDENCE OF MRS. LOEWRIKKEIT FURTHER DISCLOSES THAT SHE HAD SECOND THOUGHTS ABOUT WANTING THE UNION AFTER DISCUSSING THE MATTER WITH JOHN AND WAS TOLD IN NO UNCERTAIN TERMS, TO CHANGE HER MIND. HAVING TAKEN INTO ACCOUNT HER DESCRIPTION OF THIS DISCUSSION, WE ARE OF THE OPINION THAT HER SUBSEQUENT ACTIONS IN SIGNING THE PETITION REPRESENTED SOMETHING LESS THAN A VOLUNTARY EXPRESSION OF HER TRUE WISHES IN THIS REGARD. IN ANY EVENT, SHE TOOK THE PETITION FROM HIM AT THIS POINT AND AFTER MEETING WITH ROEMER AND NEUMANN, ALL THREE SIGNED. SHE THEN RETURNED THE PETITION TO JOHN PURSUANT TO HIS SPECIFIC INSTRUCTIONS AND THIS WAS THE LAST TIME SHE SAW IT PRIOR TO GIVING EVIDENCE AT THE HEARING.

10. JOHN WAS NOT CALLED TO GIVE EVIDENCE IN THIS MATTER.

AS WAS INDICATED IN THE SENTRY DEPARTMENT STORES CASE, OLRB, M.R. NOVEMBER 1968, P.849, THE ONUS OF MAKING ALL THE WITNESSES AVAILABLE WHO MAY HAVE INFORMATION CONCERNING THE ORIGINATION AND CIRCULATION OF THE PETITION RESTS UPON THE OBJECTING EMPLOYEES. IN THE INSTANT CASE, THERE IS NO DIRECT EVIDENCE AS TO HOW THE PETITION REACHED THE BOARD, ALTHOUGH LACROIX DID TESTIFY THAT HE HAD ASKED JOHN TO MAIL IT FOR HIM ONCE THE REMAINING THREE SIGNATURES WERE OBTAINED. THERE IS ALSO NO EVIDENCE CONCERNING THE CIRCULATION OF THE PETITION FOR THAT PERIOD OF TIME WHEN JOHN ORIGINALLY RECEIVED THE PETITION FROM LACROIX UP TO THE TIME JOHN GAVE IT TO MRS. LOEWRIKKEIT FOR SIGNATURES.

11. THEREFORE, HAVING REGARD TO THE ABOVE CIRCUMSTANCES, THE BOARD FINDS THAT THE PETITION DOES NOT WEAKEN OR QUALIFY THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT SO AS TO CAUSE THE BOARD TO SEEK THE CONFIRMATORY ORDER OF A REPRESENTATION VOTE.

12. ACCORDINGLY, IT IS NOT NECESSARY TO DETERMINE THE VALIDITY OF THE CHARGES FILED IN THIS MATTER.

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14. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

18471-70-R: OFFICE & PROFESSIONAL EMPLOYEES INTERNATIONAL UNION LOCAL 131 (APPLICANT) V. GESTETNER (CANADA) LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: W. PEEL FOR THE APPLICANT; B. W. BINNING, G. WALKER AND R. T. HUNT FOR THE RESPONDENT; R. B. CUMINE AND A. WHEELER FOR THE GROUP OF EMPLOYEES.

DECISION OF VICE-CHAIRMAN RORY F. EGAN AND BOARD MEMBER E. BOYER: FEBRUARY 12, 1971.

1. FOLLOWING THE TAKING OF THE REPRESENTATION VOTE DIRECTED BY THE BOARD IN ITS DECISION DATED OCTOBER 28, 1970, THE APPLICANT REQUESTED A HEARING IN CONNECTION THEREWITH. THE APPLICANT ALLEGED THAT THE RESPONDENT HAD ACTED CONTRARY TO THE PROVISIONS OF SECTIONS 48, 50(c) AND 53 OF THE LABOUR RELATIONS ACT.

2. THE APPLICANT SUBMITTED THAT IT REPRESENTS MORE THAN FIFTY PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT AND THAT THE BOARD OUGHT, IN THE CIRCUMSTANCES ALLEGED, CERTIFY THE APPLICANT. THE REQUEST IS OBVIOUSLY DIRECTED TOWARDS SECTION 7(5) OF THE ACT.

3. THE SECTIONS OF THE ACT IN THE ORDER REFERRED TO ARE AS FOLLOWS:

48. NO EMPLOYER OR EMPLOYERS' ORGANIZATION AND NO PERSON ACTING ON BEHALF OF AN EMPLOYER OR AN EMPLOYERS' ORGANIZATION SHALL PARTICIPATE IN OR INTERFERE WITH THE FORMATION, SELECTION OR ADMINISTRATION OF A TRADE UNION OR THE REPRESENTATION OF EMPLOYEES BY A TRADE UNION OR CONTRIBUTE FINANCIAL OR OTHER SUPPORT TO A TRADE UNION, BUT NOTHING IN THIS SECTION SHALL BE DEEMED TO DEPRIVE AN EMPLOYER OF HIS FREEDOM TO EXPRESS HIS VIEWS SO LONG AS HE DOES NOT USE COERCION, INTIMIDATION, THREATS, PROMISES OR UNDUE INFLUENCE.

50. NO EMPLOYER, EMPLOYERS' ORGANIZATION OR PERSON ACTING ON BEHALF OF AN EMPLOYER OR AN EMPLOYER'S ORGANIZATION.

(c) SHALL SEEK BY THREAT OF DISMISSAL, OR BY ANY OTHER KIND OF THREAT, OR BY THE IMPOSITION OF A PECUNIARY OR OTHER PENALTY, OR BY ANY OTHER MEANS TO COMPEL AN EMPLOYEE TO BECOME OR REFRAIN FROM BECOMING OR TO CONTINUE TO BE OR TO CEASE TO BE A MEMBER OR OFFICER OR REPRESENTATIVE OF A TRADE UNION OR TO CEASE TO EXERCISE ANY OTHER RIGHTS UNDER THIS ACT.

53. NOTHING IN THIS ACT AUTHORIZES ANY PERSON TO ATTEMPT AT THE PLACE AT WHICH AN EMPLOYEE WORKS TO PERSUADE HIM DURING HIS WORKING HOURS TO BECOME OR REFRAIN FROM BECOMING OR CONTINUING TO BE A MEMBER OF A TRADE UNION.

7(5) IF THE BOARD IS SATISFIED THAT MORE THAN 50 PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT ARE MEMBERS OF THE TRADE UNION AND THAT THE TRUE WISHES OF THE EMPLOYEES ARE NOT LIKELY TO BE DISCLOSED BY A REPRESENTATION VOTE, THE BOARD MAY CERTIFY THE TRADE UNION AS BARGAINING AGENT WITHOUT TAKING A REPRESENTATION VOTE.

4. ON THE BASIS OF THE SCHEDULES FILED BY THE RESPONDENT AND THE MEMBERSHIP CARDS FILED BY THE APPLICANT, THE BOARD IS NOT SATISFIED THAT, ON THE DATE OF THE APPLICATION, MORE THAN FIFTY PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT WERE MEMBERS OF THE APPLICANT. THAT BEING SO, THE RELIEF PROVIDED FOR IN SECTION 7(5) OF THE ACT IS NOT AVAILABLE TO THE APPLICANT IN ANY EVENT. THIS DOES NOT, OF COURSE, PRECLUDE THE BOARD FROM CONSIDERING WHETHER CONDUCT OF THE RESPONDENT IS SUCH AS TO MAKE DESIRABLE A SECOND VOTE.

5. THE EVIDENCE IS THAT IT WAS THE ESTABLISHED POLICY OF THE RESPONDENT TO CONDUCT A SALARY REVIEW AT THE END OF EACH SIX MONTH PERIOD OF AN EMPLOYEE'S SERVICE. BRUCE HOLLAND, A STENCIL MACHINE OPERATOR, WAS INTERVIEWED ON NOVEMBER 11, 1970, BY HIS SUPERVISOR. THE LATTER TOLD HIM OF THE SIX MONTH REVIEW AND THAT HE AND SOME OTHER EMPLOYEES WERE BEING RECOMMENDED FOR A SALARY INCREASE, BUT THAT EVERYTHING DEPENDED UPON WHAT HAPPENED ON MONDAY, I.E. THE DATE SET FOR THE REPRESENTATION VOTE.

6. MICHAEL O'LEARY, A MACHINE MECHANIC, TESTIFIED THAT HIS SUPERVISOR MR. PERKS CALLED HIM INTO HIS OFFICE AND TOLD HIM HE WAS RECOMMENDING A SALARY INCREASE AS THE RESULT OF THE SIX MONTH SALARY REVIEW. THE WITNESS FURTHER STATED THAT PERKS TOLD HIM THAT HE WAS RECOMMENDING SOME OTHERS ALSO, BUT THAT IT WOULD ALL DEPEND UPON MONDAY - AGAIN, THE DATE SET FOR THE REPRESENTATION VOTE. THE WITNESS SAID THAT PERKS THEN SAID TO HIM "I THINK YOU KNOW WHAT I MEAN". THE WITNESS FOUND OUT THAT THREE OTHER EMPLOYEES IN HIS DEPARTMENT HAD ALSO BEEN RECOMMENDED FOR INCREASES. THERE WAS ALSO EVIDENCE OF SOME DISCUSSIONS WITH PERKS CONCERNING THE EFFECTS OF THE LABOUR RELATIONS ACT ON THE QUESTION OF WAGE INCREASES IN THE EVENT OF CERTIFICATION OF THE UNION IS A FAIR INFERENCE THAT THE SAME MESSAGE WAS CONVEYED TO THE OTHER EMPLOYEES WHOM PERKS SAID HE WAS RECOMMENDING.

7. THE QUESTION ARISES AS TO WHETHER THIS CONDUCT OF THE RESPONDENT WAS SUCH AS TO CAUSE THE BOARD TO DIRECT ANOTHER REPRESENTATION VOTE. IN DETERMINING WHETHER THE BOARD SHOULD ORDER A NEW VOTE IN THE CIRCUMSTANCES WE BELIEVE WE MUST HAVE IN MIND THAT WHICH WE ARE NOT PRIMARILY CONCERNED WITH THE COMMISSION OF AN UNFAIR LABOUR PRACTICE AND THE ATTACHING OF A PENALTY THERETO, BUT RATHER WITH WHETHER THE CONDUCT OF THE RESPONDENT WAS SUCH AS TO HAVE HAD AN EFFECT ON THE FREE EXPRESSION OF THE DESIRE OF THE VOTERS SUFFICIENT TO WARRANT THE TAKING OF A NEW VOTE.

8. WHATEVER MAY BE SAID AS TO THE PROPRIETY OF THE COMPANY CARRYING ON WITH ITS POLICY OF WAGE REVIEWS AND RECOMMENDATIONS IN THE CIRCUMSTANCES, IT SEEMS CLEAR TO US THAT THE SUPERVISOR'S ADDED COMMENTS, VIEWED OBJECTIVELY, THAT THE OUTCOME OF THE RECOMMENDATIONS WOULD "DEPEND ON MONDAY" AND "I THINK YOU KNOW WHAT I MEAN" ARE SUCH AS TO CONSTITUTE UNDUE INFLUENCE SUCH AS TO PREVENT THE TRUE WISHES OF THE EMPLOYEES FROM BEING DISCLOSED IN A VOTE.

9. THE BOARD THEREFORE DIRECTS THAT A NEW REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT SOUGHT IN THE BOARD'S DECISION OF OCTOBER 28, 1970. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

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11. THE MATTER IS REFERRED TO THE REGISTRAR.

DECISION OF BOARD MEMBER R. W. TEAGLE: FEBRUARY 12, 1971.

1. THE APPLICANT IN THIS CASE CALLED TWO WITNESSES WHO TESTIFIED THAT THREE PEOPLE WERE INTERVIEWED RE WAGE INCREASES. THERE IS NO EVIDENCE THESE THREE PEOPLE WENT ABOUT TRYING TO INFLUENCE THE EMPLOYEES TO VOTE AGAINST THE UNION. WHAT THE COMPANY TOLD THE EMPLOYEES WAS THE TRUTH, THEIR ONLY SIN SEEMS TO BE THE TIME AT WHICH THEY TOLD THEM.

2. THERE WERE MORE THAN 200 PERSONS IN THE VOTING CONSTITUENCY AND AS WE HAVE NO EVIDENCE AS TO WHAT THESE THREE EMPLOYEES DID AFTER BEING CONTACTED BY THE COMPANY, I AM UNABLE TO FIND THE COMPANY'S ACTION MATERIALLY AFFECTED THE OUTCOME OF THE VOTE AND ACCORDINGLY I SEE NO REASON TO ORDER A NEW VOTE TO BE TAKEN.

18658-70-R: NURSES' ASSOCIATION WOMEN'S COLLEGE HOSPITAL (APPLICANT) V. WOMEN'S COLLEGE HOSPITAL (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS O. HODGES AND H. F. IRWIN.

DECISION OF THE BOARD: FEBRUARY 22, 1971.

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3. THE PARTIES AGREED UPON A STATEMENT OF FACTS WHICH ARE CONTAINED IN THE REPORT OF THE EXAMINER WITH RESPECT TO NURSES WORKING AT THE RESPONDENT HOSPITAL WHO ARE ASSOCIATED WITH THE CENTRAL REGISTRAL OF NURSES. THE STATEMENT IS SUMMARIZED BELOW. WHILE WORKING AT THE HOSPITAL THE SAID NURSES ARE ENGAGED IN GENERAL NURSING CARE AND ARE UNDER THE CONTROL AND AUTHORITY OF THE NURSING SUPERVISION OF THE RESPONDENT. THE NURSES ARE PAID A PER DIEM WAGE BY THE HOSPITAL AT A RATE SET BY THE REGISTRY. THE RESPONDENT MAKES NO DEDUCTIONS FROM THAT WAGE FOR INCOME TAX, VACATION PAY OR THE CANADA PENSION PLAN. NO FEE IS PAID TO THE REGISTRY BY THE RESPONDENT. THE NURSES THEMSELVES, HOWEVER, PAY AN ANNUAL FEE TO THE REGISTRY.

4. HAVING REGARD TO THE FACT THAT THE NURSES EMPLOYED BY THE RESPONDENT HOSPITAL THROUGH THE CENTRAL REGISTRY OF NURSES ARE PAID BY THE RESPONDENT AND WHILE AT THE HOSPITAL WORK UNDER THE DIRECTION AND CONTROL OF THE SUPERVISORY STAFF, THE BOARD FINDS THAT THE SAID NURSES, DEPENDING ON THEIR EMPLOYMENT HISTORY WITH THE HOSPITAL, ARE INCLUDED IN ONE OR OTHER OF THE UNITS FOUND TO BE APPROPRIATE IN THIS DECISION.

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18709-70-R: THE TORONTO UNION OF TAXI EMPLOYEES (APPLICANT) V. HOVE TAXI LTD. (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: B. CHERCOVER FOR THE APPLICANT, CLAUDE THOMSON FOR THE RESPONDENT.

DECISION OF THE BOARD: FEBRUARY 24, 1971.

1. THIS IS AN APPLICATION FOR CERTIFICATION WHICH WAS DISMISSED BY THE BOARD PURSUANT TO THE PROVISIONS OF SECTION 46(1) OF THE BOARD'S RULES OF PROCEDURE BY ITS DECISION DATED JANUARY 25, 1971 IN THIS MATTER ON THE GROUNDS THAT THE DOCUMENTARY EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT FAILED TO DISCLOSE MONEY PAYMENT.
2. BY LETTER DATED FEBRUARY 2, 1971, THE APPLICANT REQUESTED THE BOARD TO CONVENE A HEARING TO PERMIT THE APPLICANT TO CALL VIVA VOCE EVIDENCE TO PROVE THAT \$1.00 WAS PAID BY EACH PERSON ON WHOSE BEHALF THE APPLICANT SUBMITTED AN APPLICATION FOR MEMBERSHIP CARD.
3. THIS APPLICATION CAME ON FOR HEARING ON FEBRUARY 23, 1971 WHEREIN THE APPLICANT WAS PROVIDED AN OPPORTUNITY TO SHOW CAUSE WHY THE APPLICANT SHOULD BE ENTITLED TO CALL ORAL EVIDENCE CONCERNING THE PAYMENT OF \$1.00 BY EACH PERSON ON WHOSE BEHALF THE APPLICANT SUBMITTED AN APPLICATION FOR MEMBERSHIP CARD.
4. THE DOCUMENTARY EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT IN THIS CASE CONSISTED OF AN APPLICATION FOR MEMBERSHIP CARD SIGNED BY EACH PERSON CLAIMED BY THE APPLICANT AS A MEMBER. THE APPLICATION FOR MEMBERSHIP CARD MADE NO REFERENCE TO MONEY PAYMENT. THE APPLICANT FAILED TO FILE ANY DOCUMENTARY EVIDENCE OF MEMBERSHIP WHICH DISCLOSED MONEY PAYMENT.
5. THE APPLICANT STATED THAT IT WAS PREPARED TO CALL EVIDENCE TO ESTABLISH THAT THE PRINTER WHO PRINTED THE APPLICATION FOR MEMBERSHIP CARDS IN THIS MATTER HAD INADVERTENTLY FAILED TO PRINT A RECEIPT FORM ON THE BACK OF THE APPLICATION FOR MEMBERSHIP CARD. THE APPLICANT ALSO STATED THAT IT WAS PREPARED TO CALL EVIDENCE THAT AT THE TIME THE APPLICATION FOR MEMBERSHIP CARDS WERE SIGNED \$1.00 WAS COLLECTED FROM EACH PERSON WHO SIGNED A CARD AND A SEPARATE RECEIPT WAS DELIVERED TO SUCH PERSON. HOWEVER, AS A RESULT OF THE MISTAKE THAT HAD BEEN MADE WHEN THE CARDS WERE PRINTED THERE WAS NO RECEIPT FORM ATTACHED TO THE MEMBERSHIP CARD WHICH WOULD SERVE AS EVIDENCE OF MONEY PAYMENT FOR THE BOARD'S PURPOSES. THE APPLICANT CONCEDED THAT THE DOCUMENTARY EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT WAS NOT IN CONFORMITY WITH THE BOARD'S REQUIREMENTS IN THAT THERE WAS

NO DOCUMENTARY EVIDENCE OF MONEY PAYMENT. IT WAS THE APPLICANT'S POSITION, HOWEVER, THAT THIS DEFECT COULD BE EASILY REMEDIED IF THE APPLICANT WERE PERMITTED TO CALL VIVA VOCE EVIDENCE WHICH WOULD ESTABLISH THAT EACH PERSON HAD MADE A FINANCIAL SACRIFICE AT THE TIME THAT THE MEMBERSHIP CARD WAS SIGNED. THE APPLICANT COMPARED THE ABSENCE OF THE DOCUMENTARY EVIDENCE OF MONETARY PAYMENT TO A CLERICAL ERROR WHICH THE APPLICANT REQUESTED THE BOARD TO PERMIT THE APPLICANT TO REMEDY BY VERBAL TESTIMONY. THE APPLICANT STATED THAT IT WAS PREPARED TO CALL THE PERSONS WHO COLLECTED THE MONEY AND, IF NECESSARY, EACH OF THE MEMBERS WHO HAD PAID THE \$1.00 ON ACCOUNT OF MEMBERSHIP FEES.

6. SECTION 1(1)(GA) OF THE LABOUR RELATIONS ACT DEFINES MEMBER AS FOLLOWS:

"MEMBER", WHEN USED WITH REFERENCE TO A TRADE UNION, INCLUDES A PERSON WHO,

- (I) HAS APPLIED FOR MEMBERSHIP IN THE TRADE UNION, AND
- (II) HAS PAID TO THE TRADE UNION ON HIS OWN BEHALF AN AMOUNT OF AT LEAST \$1 IN RESPECT OF INITIATION FEES OR MONTHLY DUES OF THE TRADE UNION,

AND "MEMBERSHIP" HAS A CORRESPONDING MEANING.

SECTIONS 48(1) AND (2) OF THE BOARD'S RULES OF PROCEDURE READ AS FOLLOWS:

48(1) EVIDENCE OF MEMBERSHIP IN A TRADE UNION OR OF OBJECTION BY EMPLOYEES TO CERTIFICATION OF A TRADE UNION OR OF SIGNIFICATION BY EMPLOYEES THAT THEY NO LONGER WISH TO BE REPRESENTED BY A TRADE UNION SHALL NOT BE ACCEPTED BY THE BOARD ON AN APPLICATION FOR CERTIFICATION OR FOR A DECLARATION TERMINATING BARGAINING RIGHTS UNLESS THE EVIDENCE IS IN WRITING, SIGNED BY THE EMPLOYEE OR EACH MEMBER OF A GROUP OF EMPLOYEES AS THE CASE MAY BE, AND,

(A) IS ACCOMPANIED BY,

- (I) THE RETURN MAILING ADDRESS OF THE PERSON WHO FILES THE EVIDENCE, OBJECTION OR SIGNIFICATION, AND
- (II) THE NAME OF THE EMPLOYER; AND

(B) IS FILED NOT LATER THAN THE TERMINAL DATE FOR THE APPLICATION.

(2) NO ORAL EVIDENCE OF MEMBERSHIP IN A TRADE UNION OR OF OBJECTION BY EMPLOYEES TO CERTIFICATION OF A TRADE UNION OR OF SIGNIFICATION BY EMPLOYEES THAT THEY NO LONGER WISH TO BE REPRESENTED BY A TRADE UNION SHALL BE ACCEPTED BY THE BOARD EXCEPT TO IDENTIFY AND SUBSTANTIATE THE WRITTEN EVIDENCE REFERRED TO IN SUBSECTION 1.

7. THE DOCUMENTARY EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT IN THIS CASE SATISFIES THE FIRST REQUIREMENT OF SECTION 1(1)(GA) OF THE ACT IN THAT THE APPLICANT HAS SUBMITTED DOCUMENTARY EVIDENCE THAT THE PERSONS CLAIMED BY THE APPLICANT AS MEMBERS HAVE "APPLIED FOR MEMBERSHIP IN THE TRADE UNION." HOWEVER, THERE IS NO DOCUMENTARY EVIDENCE OF MEMBERSHIP WITH RESPECT TO THE SECOND ELEMENT OR REQUIREMENT OF SECTION 1(1)(GA) IN THAT THERE IS NO DOCUMENTARY EVIDENCE OF MEMBERSHIP THAT THE PERSON "HAS PAID TO THE TRADE UNION ON HIS OWN BEHALF AN AMOUNT OF AT LEAST \$1 IN RESPECT OF INITIATION FEES OR MONTHLY DUES OF THE TRADE UNION." IT IS RECOGNIZED THAT THE DEFINITION OF MEMBERSHIP CONTAINED IN SECTION 1(1)(GA) OF THE ACT INCLUDES A PERSON WHO HAS COMPLIED WITH THE TWO REQUIREMENTS THEREIN SET OUT, AND A MEMBER MAY ALSO INCLUDE A PERSON ON WHOSE BEHALF THE UNION SUBMITS A DUES BOOK OR A CERTIFICATE OF MEMBERSHIP WHICH IS SIGNED BY THE MEMBER AND EVIDENCES MONEY PAYMENT. HOWEVER THAT MAY BE, WHERE AN APPLICANT TRADE UNION, AS IN THIS CASE, RELIES UPON AN APPLICATION FOR MEMBERSHIP TO ESTABLISH MEMBERSHIP IN A CERTIFICATION HEARING, THE APPLICATION FOR MEMBERSHIP MUST INCLUDE A STATEMENT THAT THE MEMBER HAS PAID AT LEAST \$1.00 ON HIS OWN BEHALF IN RESPECT OF INITIATION FEES OR MONTHLY DUES OR THERE MUST BE A SEPARATE RECEIPT COUNTERSIGNED BY THE MEMBER WHEREIN HE ACKNOWLEDGES THAT HE HAS PAID AT LEAST \$1.00 IN RESPECT OF INITIATION FEES OR MONTHLY DUES.

8. SECTION 48 OF THE BOARD'S RULES OF PROCEDURE PROVIDES THAT "EVIDENCE OF MEMBERSHIP IN A TRADE UNION . . . SHALL NOT BE ACCEPTED BY THE BOARD ON AN APPLICATION FOR CERTIFICATION . . . UNLESS THE EVIDENCE IS IN WRITING, SIGNED BY THE EMPLOYEE . . . AND . . . IS FILED NOT LATER THAN THE TERMINAL DATE OF THE APPLICATION." IN ORDER TO COMPLY WITH THE REQUIREMENTS OF SECTION 48, THE DOCUMENTARY EVIDENCE OF MEMBERSHIP WHICH CONSISTS IN PART OF AN APPLICATION FOR MEMBERSHIP CARD MUST ALSO EVIDENCE THE PAYMENT OF AT LEAST \$1.00 IN RESPECT OF INITIATION FEES OR MONTHLY DUES IN ORDER TO COMPLY WITH THE REQUIREMENTS OF SECTION 1(1)(GA) OF THE ACT AND SUCH EVIDENCE MUST BE IN WRITING AND SIGNED BY THE EMPLOYEE IN ORDER TO COMPLY WITH THE REQUIREMENTS OF SECTION 48 OF THE BOARD'S RULES OF PROCEDURE. SECTION 48(2) OF THE BOARD'S RULES OF PROCEDURE PROVIDES THAT "NO ORAL EVIDENCE OF MEMBERSHIP IN A TRADE UNION . . . SHALL BE ACCEPTED

BY THE BOARD EXCEPT TO IDENTIFY AND SUBSTANTIATE THE WRITTEN EVIDENCE REFERRED TO IN SUBSECTION 1" OF SECTION 48. SINCE THERE IS NO WRITTEN EVIDENCE SIGNED BY THE EMPLOYEE CONCERNING THE PAYMENT OF \$1.00 IN RESPECT OF INITIATION FEES OR MONTHLY DUES, THERE IS NOTHING TO "IDENTIFY AND SUBSTANTIATE" AND ACCORDINGLY THE EXCEPTION REFERRED TO IN SECTION 48(2) HAS NO APPLICATION IN THIS CASE.

9. WHEN AN APPLICATION FOR CERTIFICATION IS MADE, SECTION 7 OF THE ACT REQUIRES THE BOARD TO DETERMINE WHO WERE MEMBERS OF THE TRADE UNION AT THE RELEVANT TIME. AGAIN, SECTION 83 PROVIDES FOR THE SECRECY OF UNION MEMBERSHIP. WHILE THE APPLICANT IN THIS CASE HAS AGREED TO DISCLOSE WHO THE MEMBERS WERE FOR THE PURPOSE OF ADDUCING VERBAL TESTIMONY CONCERNING MONEY PAYMENT, THE BOARD, APART FROM ANY OTHER CONSIDERATION, IS NOT PREPARED TO PERMIT SUCH COMPLETE DISCLOSURE WHICH WOULD VIOLATE THE PURPOSE AND INTENT OF SECTION 83 OF THE ACT.

10. UNDER THE PROVISIONS OF SECTION 77(2)(J), THE BOARD HAS POWER TO DETERMINE THE FORM IN WHICH EVIDENCE OF MEMBERSHIP IN A TRADE UNION SHALL BE PRESENTED TO THE BOARD. IT IS THE BOARD'S LONG-STANDING PRACTICE TO REQUIRE DOCUMENTARY EVIDENCE OF MONEY PAYMENT AS PART OF THE FORM OF EVIDENCE OF MEMBERSHIP IN A TRADE UNION IN A CERTIFICATION PROCEEDING. IN VIEW OF THE PROVISIONS OF THE ACT AND THE RULES REFERRED TO ABOVE, THE BOARD IS NOT PREPARED TO DEPART FROM SUCH PRACTICE IN THIS CASE.

11. SINCE THE APPLICANT HAS FAILED TO SUBMIT DOCUMENTARY EVIDENCE OF PAYMENT OF AN AMOUNT OF AT LEAST \$1.00 IN RESPECT OF INITIATION FEES OR MONTHLY DUES SIGNED BY THE PERSON CLAIMED BY THE APPLICANT AS A MEMBER, THE BOARD THEREFORE FINDS THAT THE APPLICANT HAS FAILED TO FILE DOCUMENTARY EVIDENCE WHICH SATISFIES BOTH ELEMENTS OF SECTION 1(1)(GA) OF THE LABOUR RELATIONS ACT. THE BOARD ACCORDINGLY FINDS THAT THE APPLICANT HAS FAILED TO ESTABLISH THAT THE PERSONS CLAIMED BY THE APPLICANT AS MEMBERS WERE MEMBERS OF THE APPLICANT UNION, WITHIN THE MEANING OF SECTION 1(1)(GA) OF THE ACT, AT THE TIME THE APPLICATION WAS MADE.

12. IN VIEW OF THE PROVISIONS OF SECTION 48 OF THE BOARD'S RULES OF PROCEDURE, THE APPLICANT IS PRECLUDED FROM FILING ADDITIONAL DOCUMENTARY EVIDENCE OF MEMBERSHIP IN THIS CASE. THE APPLICANT IS ALSO PRECLUDED BY SECTION 48(2) OF THE ACT FROM ADDUCING ORAL EVIDENCE CONCERNING MONEY PAYMENT FOR THE REASONS SET OUT ABOVE.

13. THE BOARD IS NOT PREPARED TO PERMIT THE APPLICANT TO CALL VIVA VOCE EVIDENCE TO THE EFFECT THAT \$1.00 WAS PAID BY EACH PERSON AT THE TIME THE APPLICATION FOR MEMBERSHIP WAS SIGNED. THE REQUEST OF THE APPLICANT IS THEREFORE DENIED.

14. THE BOARD ACCORDINGLY CONFIRMS ITS DECISION OF JANUARY 25, 1971 IN THIS MATTER AND DISMISSES THE APPLICATION.

18743-70-R: SUDBURY TYPOGRAPHICAL UNION, No. 846 (APPLICANT) v. THE JOURNAL PRINTING COMPANY (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS P. J. O'KEEFFE AND J. E. C. ROBINSON, Q.C..

APPEARANCES AT THE HEARING: W. V. SASSO AND JIM DUFFY FOR THE APPLICANT; L. J. VALIN AND H. HARING FOR THE RESPONDENT; RICHARD T. GRANT AND NAN TREMBLAY FOR THE GROUP OF EMPLOYEES.

DECISION OF THE BOARD: FEBRUARY 15, 1971.

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2. AFTER HEARING THE EVIDENCE OF RICHARD GRANT, LAURA GOULD AND NAN TREMBLAY CONCERNING THE ORIGINATION, PREPARATION AND CIRCULATION OF THE STATEMENT OF DESIRE FILED IN THIS MATTER, THE BOARD ON ITS OWN MOTION, WITHOUT CALLING UPON THE APPLICANT TO ADDUCE EVIDENCE IN SUPPORT OF ITS CHARGES, CALLED UPON THE PARTIES TO MAKE REPRESENTATIONS AS TO THE WEIGHT THAT THE BOARD SHOULD GIVE TO THE STATEMENT OF DESIRE IN LIGHT OF THE EVIDENCE.

3. HAVING REGARD TO THE EVIDENCE AND UPON HEARING THE REPRESENTATIONS OF THE PARTIES, THE BOARD FINDS THAT THE STATEMENT DOES NOT SUFFICIENTLY WEAKEN OR QUALIFY THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT SO AS TO CAUSE THE BOARD TO SEEK THE CONFIRMATORY ORDER OF A REPRESENTATION VOTE.

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5. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

18767-70-R: CSAO NATIONAL (INC.) (APPLICANT) v. OAKVILLE TRAFALGAR MEMORIAL HOSPITAL ASSOCIATION (RESPONDENT).

BEFORE: J. H. BROWN, Q.C. ALTERNATE CHAIRMAN, AND BOARD MEMBERS O. HODGES AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: B. COFFEY AND R. DENNY FOR THE APPLICANT, H. A. BERESFORD, MISS L. H. PARSONS AND J. MOOGLE FOR THE RESPONDENT.

DECISION OF THE BOARD: FEBRUARY 19, 1971.

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2. THE APPLICANT IS APPLYING FOR CERTIFICATION AS BARGAINING AGENT FOR A UNIT OF MEDICAL LABORATORY TECHNOLOGISTS AND TECHNICIANS.

THE REGISTRAR ADVISED THE APPLICANT BY LETTER THAT AT THE HEARING OF THE APPLICATION THE APPLICANT WOULD BE REQUIRED TO SATISFY THE BOARD THAT ITS ORGANIZATION WAS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

3. AT THE HEARING DOCUMENTARY AND ORAL EVIDENCE WAS ADDUCED BY THE APPLICANT RELATING BOTH TO ITS STATUS AS A TRADE UNION AND TO ITS ABILITY TO REPRESENT THE CLASSIFICATIONS OF EMPLOYEES FOR WHOM IT IS SEEKING CERTIFICATION. THE BOARD ENTERTAINED BOTH ORAL AND WRITTEN SUBMISSIONS ON THE ABOVE TWO ISSUES.

4. THE APPLICANT WAS INCORPORATED AS A COMPANY WITHOUT SHARE CAPITAL UNDER THE CANADA CORPORATIONS ACT R.S.C. 1952, c. 53 AS AMENDED BY 1964-65, c. 52, AND ITS LETTERS PATENT ARE DATED OCTOBER 16, 1970. THE APPLICATION FOR THE LETTERS PATENT WAS MADE BY TWENTY-SIX NAMED PERSONS WHO WERE BOTH THE PROVISIONAL DIRECTORS AND ORIGINAL MEMBERS OF THE APPLICANT. ALL TWENTY-SIX PROVISIONAL DIRECTORS AND ORIGINAL MEMBERS HELD A SERIES OF CONSECUTIVE MEETINGS ON OCTOBER 20, 1970, THE MINUTES OF WHICH ARE FILED WITH THE BOARD. WHILE ALL OF THEM WERE PRESENT AT THE MEETINGS, ONLY NINETEEN OF THEM SIGNED WAIVERS OF NOTICE OF THE MEETINGS. ALL OF THEM, HOWEVER, PARTICIPATED IN THE BUSINESS OF THE APPLICANT WHICH WAS TRANSACTED AT THE MEETINGS. AT THE MEETINGS, INTER ALIA, A CHAIRMAN AND SECRETARY-TREASURER WERE APPOINTED, ALL TWENTY-SIX PROVISIONAL DIRECTORS WERE ELECTED AS PERMANENT DIRECTORS, AND OFFICERS WERE ELECTED. BY-LAWS RELATING TO FINANCIAL MATTERS AND A BY-LAW (HEREINAFTER REFERRED TO AS BY-LAW NO. 1) RELATING TO THE TRANSACTION OF THE APPLICANT'S BUSINESS WERE UNANIMOUSLY PASSED BY THE BOARD OF DIRECTORS. ON NOVEMBER 8, 1970, A FURTHER MEETING OF THE DIRECTORS OF THE APPLICANT WAS HELD. PROPER NOTICE OF THE MEETING WAS GIVEN TO EACH DIRECTOR AND THE MEETING WAS ATTENDED BY TWENTY-TWO DIRECTORS, WHICH WAS A QUORUM. THE MINUTES OF THE MEETING WHICH ARE SIGNED BY THE CHAIRMAN AND SECRETARY RECORD THAT THE BOARD OF DIRECTORS PRESENT UNANIMOUSLY PASSED A RESOLUTION APPROVING THE ADMITTANCE OF MEDICAL TECHNOLOGISTS AND TECHNICIANS INTO MEMBERSHIP IN THE APPLICANT. THE DIRECTORS, HOWEVER, DID NOT AFFIX THEIR SIGNATURES TO THE MINUTE BOOK IN THE SPACE PROVIDED IN ORDER TO RATIFY, APPROVE AND CONFIRM THE RESOLUTION NOR IS THE CORPORATE SEAL OF THE APPLICANT ATTACHED TO THE RESOLUTION.

5. AT THE BOARD HEARING, CHALLENGES WERE MADE RELATING BOTH TO PROPRIETY OF THE PROCEDURES ADOPTED BY THE APPLICANT IN ITS FORMATION AND THE AUTHORITY OF THE APPLICANT TO REPRESENT OR TO BE CERTIFIED FOR THE PERSONS FOR WHOM IT IS SEEKING CERTIFICATION. MORE PARTICULARLY, THE CHALLENGES CAN BE BRIEFLY SUMMARIZED AS FOLLOWS: (1) THE OBJECTS OF THE APPLICANT AS CONTAINED IN ITS LETTERS PATENT ARE NOT SUFFICIENTLY BROAD TO ENCOMPASS MEDICAL TECHNOLOGISTS AND TECHNICIANS. (2) THE FAILURE OF THE DIRECTORS TO CONFIRM BY THEIR SIGNATURES THE RESOLUTION PASSED AT THE NOVEMBER 8, 1970 MEETING OF THE BOARD AND THE ABSENCE OF

THE CORPORATE SEAL RENDERED THE RESOLUTION INOPERATIVE. (3) THE FAILURE OF SEVEN OF THE DIRECTORS TO SIGN WAIVERS OF NOTICE OF THE MEETINGS HELD ON OCTOBER 20, 1970 INVALIDATED THE BUSINESS TRANSACTED AT THESE MEETINGS. (4) THE ELIGIBILITY FOR MEMBERSHIP PROVISIONS OF BY-LAW No. 1 PRECLUDED THE PROVISIONAL DIRECTORS OF THE APPLICANT FROM REMAINING AS MEMBERS OF THE APPLICANT AND THEREFORE THE PROVISIONAL MEMBERS WERE NOT ELIGIBLE TO BE ELECTED AS PERMANENT DIRECTORS OR AS OFFICERS OF THE APPLICANT. (5) CLAUSE 3 OF BY-LAW No. 1 DISCRIMINATES AGAINST THE PERSONS FOR WHOM THE APPLICANT SUBMITTED EVIDENCE OF MEMBERSHIP IN SUPPORT OF ITS APPLICATION.

6. THE BOARD HAS REVIEWED THE EVIDENCE AND SUBMISSIONS BEFORE IT. WE HAVE ALSO TAKEN INTO ACCOUNT THE PROVISIONS OF THE CANADA CORPORATIONS ACT (SUPRA), RELEVANT JUDICIAL AUTHORITIES DEALING WITH CORPORATE PROCEDURE, AND THE BOARD'S OWN DECISIONS RELATING TO THE BOARD'S REQUIREMENTS WITH RESPECT TO UNION MEMBERSHIP. HAVING REGARD TO ALL OF THE FOREGOING, AND FOR THE REASONS INDICATED, THE BOARD HAS MADE DETERMINATIONS ON THE ABOVE ENUMERATED ISSUES WHICH WERE RAISED. THE MATTERS ARE DEALT WITH IN THE SAME ORDER AS IN THE ABOVE PARAGRAPH.

7. THE OBJECTS OF THE APPLICANT AS SET OUT IN ITS LETTERS PATENT READ:

- (A) TO REPRESENT THE MEMBERS OF THE CORPORATION AS EMPLOYEES OF GOVERNMENTS AT ALL LEVELS OR BOARDS, COMMISSIONS OR OTHER EMANATIONS OF THE CROWN IN THE RIGHT OF CANADA OR ANY PROVINCE OR TERRITORY THEREOF OR THE EMPLOYEES OF ANY LONGER OF ANY TYPE OR NATURE WHICH THE BOARD OF DIRECTORS MAY IN ITS SOLE DISCRETION DETERMINE TO BE APPROPRIATE FOR MEMBERSHIP IN THE CORPORATION AND THE CORPORATION MAY REPRESENT SUCH MEMBERS IN MATTERS GOVERNING THEIR RELATIONSHIPS WITH THEIR EMPLOYERS;
- (B) TO ENTER INTO ANY ARRANGEMENTS WITH ANY AUTHORITIES, GOVERNMENTAL, MUNICIPAL, LOCAL OR OTHERWISE, (ON A NATIONAL OR OTHER BASIS) THAT MAY SEEM CONDUCIVE TO THE CORPORATION'S RIGHTS, PRIVILEGES AND CONCESSIONS WHICH THE CORPORATION MAY THINK DESIRABLE TO OBTAIN AND TO CARRY OUT, EXERCISE AND COMPLY WITH ANY SUCH ARRANGEMENTS, RIGHTS, PRIVILEGES AND CONCESSIONS;
- (C) GENERALLY, TO PROMOTE THE COMMON INTERESTS AND BETTERMENT OF THE MEMBERS OF THE CORPORATION.

IT IS SUBMITTED THAT THE POWERS CONFERRED ON THE APPLICANT IN CLAUSE (A) TO REPRESENT EMPLOYEES OF AN EMPLOYER WHOM THE BOARD OF DIRECTORS DECIDES ARE APPROPRIATE FOR MEMBERSHIP IN THE APPLICANT ARE RESTRICTED

BY THE POWERS CONFERRED ON THE APPLICANT BY CLAUSE (B) OF THE OBJECTS. MORE SPECIFICALLY, IT IS ARGUED THAT THE BOARD OF DIRECTORS IS RESTRICTED TO FIND ONLY THE EMPLOYEES OF A PUBLIC AUTHORITY APPROPRIATE FOR MEMBERSHIP SINCE THE APPLICANT BY CLAUSE (B) CAN ONLY ENTER INTO ARRANGEMENTS WITH SUCH AUTHORITIES. THE BOARD'S DECISION IN THE CIVIL SERVICE ASSOCIATION OF ONTARIO (INC.) V. VERSAFOOD SERVICES LIMITED INSTITUTIONS DIVISION UNIVERSITY OF GUELPH JANUARY 1968, OLRB M.R. P. 988 WAS CITED AS A SUPPORTING AUTHORITY.

8. THE AFORESAID BOARD DECISION IS READILY DISTINGUISHABLE FROM THE INSTANT CASE BY REASON OF THE VERY MUCH MORE RESTRICTIVE OBJECTS CLAUSE CONTAINED IN THE LETTERS PATENT OF THE CIVIL SERVICE ASSOCIATION OF ONTARIO (INC.). THE LETTERS PATENT OF THE SAID ORGANIZATION CONFINED IT TO REPRESENTING MEMBERS OF THE GOVERNMENT OF THE PROVINCE OF ONTARIO OR A BOARD, COMMISSION OR OTHER EMANATION OF THE CROWN IN THE RIGHT OF ONTARIO OR AS A PUBLIC SERVANT WITHIN THE PROVISIONS OF THE PUBLIC SERVICE ACT (ONTARIO). ON THE OTHER HAND, THE OBJECTS SET OUT IN CLAUSE (A) CONFER ON THE PRESENT APPLICANT A RIGHT OF REPRESENTATION, SUBJECT ONLY TO SUCH RESTRICTIONS AS ARE IMPOSED BY ITS OWN BOARD OF DIRECTORS. WE ACCORDINGLY FIND THAT THE OBJECTS CONTAINED IN THE APPLICANT'S LETTERS PATENT ARE NO IMPEDIMENT TO THE APPLICANT REPRESENTING THE MEDICAL LABORATORY TECHNOLOGISTS AND TECHNICIANS FOR WHOM IT IS SEEKING CERTIFICATION.

9. AT A MEETING OF THE BOARD OF DIRECTORS ON NOVEMBER 8, 1970, A RESOLUTION WAS UNANIMOUSLY CARRIED BY THE TWENTY-TWO DIRECTORS IN ATTENDANCE. THE RESOLUTION WHICH APPROVES THE ADMITTANCE OF MEDICAL TECHNOLOGISTS AND TECHNICIANS INTO MEMBERSHIP IN THE APPLICANT READS AS FOLLOWS:

"THE BOARD OF DIRECTORS OF CSAO NATIONAL (INC.) DECLARE THAT IN THE PURSUANCE OF ITS AIMS AND OBJECTS IT IS APPROPRIATE THAT ALL PERSONS ENGAGED IN THE OCCUPATIONS OF MEDICAL TECHNOLOGISTS AND TECHNICIANS AND RELATED OCCUPATIONS INCLUDING INSTRUCTORS AND TEACHERS OF PERSONS IN THESE AND RELATED OCCUPATIONS BE ADMITTED TO MEMBERSHIP IN ACCORDANCE WITH THE CHARTER AND BY-LAWS OF CSAO NATIONAL (INC.) ON PAYMENT OF \$1.50 INITIATION FEE."

10. IT IS SUBMITTED THAT IN ORDER FOR THE RESOLUTION TO BE VALID IT WAS NECESSARY FOR THE DIRECTORS TO AFFIX THEIR SIGNATURES TO THE MINUTE BOOK IN THE SPACE SO PROVIDED AND FURTHER THAT THE CORPORATE SEAL OF THE APPLICANT BE ATTACHED TO THE RESOLUTION. FOR PURPOSES OF DEALING WITH THESE TWO MATTERS, WE ARE DISREGARDING FOR THE MOMENT THE CHALLENGES MADE WITH RESPECT TO THE STATUS OF THE DIRECTORS.

11. THE MINUTES OF THE MEETING OF THE BOARD OF DIRECTORS HELD ON NOVEMBER 8, 1970 ARE SIGNED BY THE CHAIRMAN AND SECRETARY. THE MINUTES RECORD THAT THE ABOVE RESOLUTION WAS UNANIMOUSLY PASSED BY THE DIRECTORS. THIS RECORD IS PRIMA FACIE EVIDENCE THAT THE SAID BUSINESS TRANSACTION OCCURRED. IN THE ABSENCE OF ANY EVIDENCE TO THE CONTRARY, WE ACCEPT AS FACT THAT THE RESOLUTION WAS PASSED AND IS IN FULL FORCE AND EFFECT. IT IS NOT NECESSARY FOR THE DIRECTORS PRESENT TO AFFIX THEIR SIGNATURES TO THE MINUTES APPROVING, RATIFYING AND CONFIRMING THE RESOLUTION TO ESTABLISH THAT THEY PARTICIPATED IN THE PASSING OF THE RESOLUTION. FURTHER, THE ATTACHING OF THE APPLICANT'S SEAL TO THE RESOLUTION IS NOT REQUIRED TO VALIDATE ITS ADOPTION.

12. IT IS SUBMITTED THAT THE FACT THAT ONLY NINETEEN OF THE TWENTY-SIX DIRECTORS SIGNED WAIVERS OF NOTICE FOR EACH OF THE CONSECUTIVE HALF DOZEN MEETINGS HELD ON OCTOBER 20, 1970 WAS A PROCEDURAL DEFECT THAT NULLIFIED THE BUSINESS TRANSACTED AT THOSE MEETINGS. WE WOULD POINT OUT THAT ACCORDING TO THE MINUTES OF THOSE MEETINGS ALL TWENTY-SIX DIRECTORS WERE IN ATTENDANCE AT ALL OF THE SAID MEETINGS AND THE RECORD INDICATES THAT ALL PARTICIPATED IN THE BUSINESS ON THE AGENDA OF THE MEETINGS. THE VERY PRESENCE OF ALL OF THE DIRECTORS MADE SUPERFLUOUS ANY NEED FOR WAIVERS OF NOTICE OF THE MEETINGS. THE FACT THAT SEVEN OF THE DIRECTORS, FOR WHATEVER REASON, DID NOT SIGN WAIVERS IN NO WAY IMPUGNS THE BUSINESS TRANSACTED AT THE MEETINGS.

13. IT IS SUBMITTED THAT THE ELIGIBILITY PROVISIONS CONTAINED IN SUBSECTION (A) OF SECTION 3 OF BY-LAW No. 1 RENDERED THE PROVISIONAL DIRECTORS INELIGIBLE FOR MEMBERSHIP IN THE APPLICANT. SECTION 3, SUBSECTION (A) READS:

3. MEMBERSHIP

(A) ELIGIBILITY -

(1) REGULAR MEMBERS: ANY PERSON WHO IS EMPLOYED WITHIN A BARGAINING UNIT FOR WHICH THE ASSOCIATION IS THE BARGAINING AGENT WHO SIGNS AN APPLICATION FOR MEMBERSHIP IN THE FORM APPROVED BY THE BOARD OF DIRECTORS SHALL BE ELIGIBLE FOR AND SHALL BE ADMITTED TO MEMBERSHIP IN THE ASSOCIATION AT THE DISCRETION OF THE BOARD OF DIRECTORS. ACCEPTANCE OF AN APPLICATION FOR MEMBERSHIP SHALL BE DEEMED TO INDICATE THAT THE PERSON WHOSE APPLICATION IS ACCEPTED IS SUBJECT TO THE BY-LAWS AND REGULATIONS OF THE ASSOCIATION. A MEMBERSHIP CARD

SHALL BE FORWARDED TO EACH MEMBER CERTIFYING HIS MEMBERSHIP IN THE ASSOCIATION.

(11) PROVISIONAL MEMBERS: ANY PERSON WHO IS EMPLOYED WITHIN A BARGAINING UNIT FOR WHICH THE ASSOCIATION SEEKS RECOGNITION AS THE BARGAINING AGENT WHO SIGNS AN APPLICATION FOR MEMBERSHIP IN THE FORM APPROVED BY THE BOARD OF DIRECTORS AND PAYS THE INITIATION FEE STIPULATED BY THE BOARD OF DIRECTORS SHALL BE ELIGIBLE FOR AND SHALL BECOME A PROVISIONAL MEMBER. A PROVISIONAL MEMBER SHALL BECOME A REGULAR MEMBER ON RECOGNITION OF THE ASSOCIATION AS THE BARGAINING AGENT FOR THE UNIT IN WHICH HE IS EMPLOYED.

(111) LIFE MEMBERS: LIFE MEMBERS SHALL BE RESTRICTED TO THOSE PREVIOUSLY GRANTED SUCH MEMBERSHIP IN THE ASSOCIATION WHO SHALL RETAIN ALL RIGHTS AND PRIVILEGES HERETOFORE GRANTED TO THEM AS SUCH BUT NO NEW LIFE MEMBERSHIP SHALL BE CREATED.

AT THE BOARD HEARING, THE SECRETARY OF THE APPLICANT IN HER VIVA VOCE TESTIMONY AND THE REPRESENTATIVE APPEARING ON BEHALF OF THE APPLICANT BOTH UNEQUIVOCALLY ASSERTED THAT THE PROVISIONAL DIRECTORS DID NOT FALL WITHIN THE CATEGORY OF LIFE MEMBERS OF THE APPLICANT. THE REPRESENTATIVE OF THE APPLICANT AT THE HEARING FURTHER AGREED THAT ALL SUBMISSIONS RELATING TO THE STATUS OF THE DIRECTORS, COULD BE PREMISED ON THAT FACT. INDEED, THE SUBMISSIONS BOTH ORAL AND WRITTEN RECEIVED BY THE BOARD WERE BASED UPON THIS AGREED PREMISE. THE APPLICANT, HOWEVER, IN ITS WRITTEN SUBMISSIONS APPEARS TO SUGGEST THAT THE PROVISIONAL DIRECTORS FALL WITHIN THE CATEGORY OF LIFE MEMBERS. IT MAY BE THAT THE LANGUAGE OF THE DEFINITION OF A LIFE MEMBER IS OPEN TO THE LATTER INTERPRETATION. BE THAT AS IT MAY, HAVING REGARD TO THE ABOVE AGREEMENT, THE BOARD HAS DEALT BELOW WITH THE QUESTION OF THE STATUS OF THE DIRECTORS OF THE APPLICANT ON THE PREMISE THAT THEY DO NOT FALL WITHIN THE AMBIT OF THE ELIGIBILITY FOR MEMBERSHIP PROVISIONS ESTABLISHED IN SECTION 3 OF BY-LAW No. 1.

14. THE TWENTY-SIX PROVISIONAL DIRECTORS, BY REASON OF THE FACT THAT THEY WERE THE INITIAL INCORPORATORS NAMED IN THE LETTERS PATENT OF THE APPLICANT, ARE DEEMED TO BE THE FIRST MEMBERS IN THE CASE OF A NON-CAPITAL CORPORATION SUCH AS THE APPLICANT. MOREOVER, NOTWITHSTANDING THAT THEY CANNOT MEET THE ELIGIBILITY FOR MEMBERSHIP REQUIREMENTS ESTABLISHED IN BY-LAW No. 1 WHICH THEY SUBSEQUENTLY PASSED, AS STATUTORY FIRST MEMBERS THEIR STATUS CANNOT BE IMPUGNED. ACCORDINGLY, WHILE IT IS IMPLICIT WHEN THEY STOOD FOR ELECTION AS PERMANENT DIREC-

TORS THEY RESIGNED THEIR POSITIONS AS PROVISIONAL DIRECTORS, IN THAT PROCESS THE TWENTY-SIX PERSONS CONCERNED DID NOT DISQUALIFY THEMSELVES AS MEMBERS OF THE APPLICANT. IT, OF COURSE, FOLLOWS THAT THEY WERE ALSO ABLE TO STAND FOR ELECTION AS OFFICERS OF THE APPLICANT.

15. THE REPRESENTATIVE OF THE APPLICANT ADVISED THE BOARD THAT THE MEDICAL TECHNOLOGISTS AND TECHNICIANS FOR WHOM THE APPLICANT SUBMITTED EVIDENCE OF MEMBERSHIP IN SUPPORT OF ITS APPLICATION FALL WITHIN THE CATEGORY OF PROVISIONAL MEMBERS AS DEFINED IN SECTION 3(A)(II) OF BY-LAW NO. 1 QUOTED ABOVE. THE REPRESENTATIVE OF THE APPLICANT FURTHER ADVISED THE BOARD THAT PROVISIONAL MEMBERS REMAINED IN THAT CATEGORY UNTIL SUCH TIME AS THEY BECOME MEMBERS OF A UNIT FOR WHICH THE APPLICANT ACQUIRES THE RIGHT TO BARGAIN FOR THEM WITH THEIR EMPLOYER. ACCORDINGLY TO THE REPRESENTATIVE OF THE APPLICANT, ONLY UPON THE FULFILMENT OF THE ABOVE CONTINGENCY DO PROVISIONAL MEMBERS BECOME REGULAR MEMBERS OF THE APPLICANT.

16. SUBSECTION (D) OF SECTION 3 OF BY-LAWS NO. 1 READS:

(D) RIGHTS AND PRIVILEGES -

(I) EVERY MEMBER IN GOOD STANDING IS ENTITLED TO REPRESENTATION WITHIN THE POLICY OF THE ASSOCIATION.

(II) SUBJECT TO ANY QUALIFICATION WHICH MAY BE STIPULATED IN THIS BY-LAW, ANY MEMBER IN GOOD STANDING MAY BE NOMINATED FOR OFFICE AND MAY HOLD ANY OFFICE IN THE ASSOCIATION EXCEPT IF HE CEASES TO BE EMPLOYED BY ANY EMPLOYER WITH WHOM THE ASSOCIATION HAS BARGAINING RELATIONSHIPS OR IS PROMOTED TO A POSITION EXCLUDED FROM THE ASSOCIATION'S BARGAINING JURISDICTION.

(III) ANY MEMBER IN GOOD STANDING MAY ATTEND ANY MEETING OF THE BOARD OF DIRECTORS OF THE ASSOCIATION OR ANY ANNUAL OR SPECIAL MEETING OF THE ASSOCIATION NOTWITHSTANDING THAT HE MAY NOT HAVE A VOTE AT SUCH MEETING.

17. THE LANGUAGE OF CLAUSE (II) QUOTED ABOVE WOULD APPEAR TO BAR PROVISIONAL MEMBERS FROM HOLDING ANY OFFICE IN THE APPLICANT SINCE THEY ARE NOT EMPLOYED BY AN EMPLOYER WITH WHOM THE APPLICANT HAS A BARGAINING RELATIONSHIP. THE SECRETARY OF THE APPLICANT IN HER VIVA VOCE TESTIMONY AND THE REPRESENTATIVE OF THE APPLICANT IN BOTH HIS ORAL AND WRITTEN REPRESENTATIONS CONFIRMED THIS INTERPRETATION OF CLAUSE (II). THAT IS TO SAY, THEY BOTH ASSERTED THAT PROVISIONAL MEMBERS ARE PRE-

CLUDED FROM HOLDING ANY OFFICE IN THE APPLICANT UNTIL SUCH TIME AS THE APPLICANT ACQUIRES THE RIGHT TO BARGAIN FOR THEM WITH THEIR EMPLOYER. THE REASON ADVANCED FOR THIS LIMITATION UPON THE RIGHTS OF PROVISIONAL MEMBERS IS EXPRESSED IN THE FOLLOWING TERMS IN THE WRITTEN SUBMISSIONS OF THE APPLICANT:

IF UNIONS ALLOWED MEMBERS WHO WERE NOT PAYING DUES OR IN CERTIFIED BARGAINING UNITS TO PARTICIPATE IN ELECTIONS, IT WOULD CAUSE A GREAT DEAL OF FRICTION AMONG THE REGULAR DUES PAYING MEMBERS APART FROM THE PROBLEM OF POSSIBLE VACANCIES AND THE DIFFICULTIES OF FILLING SUCH VACANCIES IN THE EVENT THAT CERTIFICATION IS NOT OBTAINED FOR THE UNIT IN QUESTION.

THE APPLICANT IN ITS WRITTEN REPRESENTATIVES WENT ON TO EXPRESS THE VIEW THAT INTER ALIA THE ABOVE RESTRICTION WAS A "LEGITIMATE QUALIFICATION" TO ENSURE THAT UNINITIATED AND INEXPERIENCED MEMBERS WOULD NOT BE ABLE TO TAKE OVER THE AFFAIRS OF THE UNION. THE APPLICANT FURTHER SUBMITS THAT THE RESTRICTIONS PLACED ON PROVISIONAL MEMBERS BY THE APPLICANT ARE IN RECORD WITH THE TYPE OF MEMBERSHIP RESTRICTIONS OFTEN IMPOSED BY TRADE UNIONS.

18. THIS BOARD IS NOT AWARE OF ANY PURPORTED TRADE UNION WHICH PROVIDES FOR DIFFERENT CLASSES OF MEMBERSHIP, ONE CLASS HAVING INFERIOR RIGHTS AND PRIVILEGES TO THE OTHER OR OTHERS. IN ANY EVENT, THE BOARD WOULD NOT CONFER THE STATUS OF A TRADE UNION UPON ANY ORGANIZATION WITH SUCH A MEMBERSHIP STRUCTURE. APPLIED TO THE INSTANT APPLICATION, BASED SOLELY ON THE MEMBERSHIP LIMITATIONS IMPOSED ON THE MEDICAL TECHNOLOGISTS AND TECHNICIANS FOR WHOM THE APPLICANT IS SEEKING CERTIFICATION, THE BOARD IS NOT PREPARED TO GRANT THE APPLICANT THE STATUS OF A TRADE UNION WITHIN THE MEANING OF SECTION 1(1) (J) OF THE LABOUR RELATIONS ACT (ROSELAWN PLASTERING Co. LTD. CASE OLRB M.R. MARCH 1968 P. 1178; KINGSWAY PLASTERING Co. LTD. CASE OLRB M.R. FEBRUARY 1970 P. 1360).

19. NOTWITHSTANDING THE ABOVE DETERMINATION, WE WOULD DRAW ATTENTION TO TWO FEATURES OF THE DEFINITION OF PROVISIONAL MEMBERS OF THE APPLICANT WHICH CAUSE US SOME CONCERN. FIRST, BY SECTION 3(A) (II) OF BY-LAW No. 1, A PROVISIONAL MEMBER IS A PERSON WHO IS EMPLOYED WITHIN A BARGAINING UNIT FOR WHICH THE APPLICANT SEEKS RECOGNITION AS THE BARGAINING AGENT. LET US ASSUME FOR PURPOSES OF ARGUMENT THAT THE APPLICANT IS UNSUCCESSFUL IN THE INSTANT APPLICATION AND DOES NOT SECURE THE BARGAINING RIGHTS FOR THE UNIT OF EMPLOYEES FOR WHICH IT IS SEEKING CERTIFICATION. IN THIS EVENTUALITY A QUESTION ARISES IN OUR MINDS AS TO WHETHER OR NOT THE MEDICAL TECHNOLOGISTS AND TECHNICIANS WHO HAVE JOINED THE APPLICANT AS PROVISIONAL MEMBERS RETAIN THEIR STATUS AS MEMBERS. STATED ANOTHER WAY, AN ISSUE IS POSED AS TO

WHETHER THE TYPE OF MEMBERSHIP SUBMITTED BY THE APPLICANT IN SUPPORT OF ITS APPLICATION IS TANTAMOUNT TO CONDITIONAL MEMBERSHIP. IF THE ANSWER IS IN THE AFFIRMATIVE THEN SUCH MEMBERSHIP EVIDENCE CLEARLY DOES NOT MEET THE LONG STANDING REQUIREMENTS OF THIS BOARD.

20. THE SECOND FEATURE OF THE DEFINITION OF PROVISIONAL MEMBER WHICH IS SOMEWHAT TROUBLING IS THAT ACCORDING TO SECTION 3(A)(II), PROVISIONAL MEMBERS ARE TO "SIGN AN APPLICATION FOR MEMBERSHIP IN THE FORM APPROVED BY THE BOARD OF DIRECTORS." WE CAN FIND NO RECORD IN THE MINUTES OF THE MEETINGS OF THE BOARD OF DIRECTORS OF THE APPLICANT APPROVING THE FORM OF APPLICATION FOR MEMBERSHIP SUBMITTED IN THE INSTANT APPLICATION, OR FOR THAT MATTER APPROVING ANY FORM OF APPLICATION FOR MEMBERSHIP.

21. IN VIEW, HOWEVER, OF THE BOARD'S FINDING THAT THE APPLICANT IS NOT A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE ACT BECAUSE OF ITS DISCRIMINATION AGAINST PROVISIONAL MEMBERS WITH RESPECT TO THE RIGHTS AND PRIVILEGES WHICH THEY CAN EXERCISE WITHIN THE APPLICANT'S ORGANIZATION, IT IS NOT NECESSARY FOR THE BOARD TO MAKE ANY DETERMINATION ON THE ABOVE TWO MATTERS.

22. IN THE RESULT, THE APPLICANT HAVING FAILED TO ESTABLISH ITS STATUS AS A TRADE UNION, THE APPLICATION IS DISMISSED.

18980-70-R: CHRISTIAN TRADE UNIONS OF CANADA (LOCAL #6) (APPLICANT) V. BESSELYING PLUMBING & HEATING LIMITED (RESPONDENT).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

DECISION OF THE BOARD: FEBRUARY 19, 1971.

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5. THE BOARD FURTHER FINDS THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 92 OF THE LABOUR RELATIONS ACT.

6. THE APPLICANT HAS PROPOSED AS THE UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING:

"ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF WENTWORTH AND THE TOWNSHIP OF MASSAGAWEYA AND THE TOWN OF BURLINGTON, IN THE COUNTY OF HALTON, AND THE COUNTIES OF HALDIMAND AND WELLAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."

7. THE BARGAINING UNIT PROPOSED BY THE APPLICANT CONTAINS THE WHOLE OF THE REGULAR BOARD GEOGRAPHIC AREA NUMBER 26 (WHICH CONSISTS OF THE COUNTY OF WENTWORTH AND THE TOWNSHIP OF NASSAGAWAY AND THE TOWN OF BURLINGTON IN THE COUNTY OF HALTON) AND PART OF REGULAR BOARD GEOGRAPHIC AREA NUMBER 5 (WHICH CONSISTS OF THE REGIONAL MUNICIPALITY OF NIAGARA AND THE COUNTY OF HALDIMAND). IT IS NOT THE PRACTICE OF THE BOARD TO COMBINE ITS GEOGRAPHIC AREAS IN DEFINING AN APPROPRIATE BARGAINING UNIT IN CASES IN THE CONSTRUCTION INDUSTRY. ON THE DATE OF THE MAKING OF THIS APPLICATION FOR CERTIFICATION THE RESPONDENT HAD TWO PLUMBERS' APPRENTICES WORKING ON TWO JOBS IN HAMILTON (WHICH IS IN REGULAR BOARD GEOGRAPHIC AREA NUMBER 26) AND ONE PLUMBER WORKING ON ONE JOB AT YORK IN THE COUNTY OF HALDIMAND (WHICH IS IN REGULAR BOARD GEOGRAPHIC AREA NUMBER 5).

8. IT FOLLOWS THAT, HAVING REGARD TO THE PROVISIONS OF SECTION 6(1) OF THE LABOUR RELATIONS ACT, THERE IS NO APPROPRIATE BARGAINING UNIT WITH REFERENCE TO THE JOB AT YORK IN THE COUNTY OF HALDIMAND AND THE APPLICATION IS DISMISSED IN SO FAR AS IT RELATES TO THE SAID JOB IN THE COUNTY OF HALDIMAND.

9. ALTHOUGH THE APPLICANT HAS APPLIED FOR AN ALL EMPLOYEE UNIT, THERE WERE IN THE EMPLOY OF THE RESPONDENT AT HAMILTON ON THE DATE OF THE MAKING OF THIS APPLICATION ONLY TWO PLUMBERS' APPRENTICES. HAVING REGARD TO THE PRINCIPLE ENUNCIATED IN THE WINTER & SON CASE, OLRB MONTHLY REPORTS FEBRUARY 1967, P. 889 AND TO SECTION 6(1) OF THE LABOUR RELATIONS ACT, THE BOARD FURTHER FINDS THAT ALL PLUMBERS AND PLUMBERS' APPRENTICES, STEAMFITTERS AND STEAMFITTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WENTWORTH AND THE TOWNSHIP OF NASSAGAWEYA AND THE TOWN OF BURLINGTON IN THE COUNTY OF HALTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

10. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT DEFINED IN PARAGRAPH NINE, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON FEBRUARY 16, 1971, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

11. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT DEFINED IN PARAGRAPH NINE. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT DEFINED IN PARAGRAPH NINE ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

12. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT.

13. THE MATTER IS REFERRED TO THE REGISTRAR.

18428-70-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. NAVCO FOOD SERVICES LIMITED (FORMERLY NATIONAL AUTOMATIC VENDING COMPANY LIMITED) (RESPONDENT) V. HOTEL & RESTAURANT EMPLOYEES AND BARTENDERS' INTERNATIONAL UNION, RESTAURANT, CAFETERIA AND TAVERN EMPLOYEES UNION, LOCAL 254 (INTERVENER).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: IAN G. SCOTT AND CLIFFORD EVANDS FOR THE APPLICANT; C. G. RIGGS FOR THE RESPONDENT; M. LEVINSON, W. KITCHING, V. PILIOTIS AND J. SOBOLEWSKI FOR THE INTERVENER.

DECISION OF THE BOARD: FEBRUARY 17, 1971.

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2. THIS IS AN APPLICATION UNDER SECTION 47 OF THE LABOUR RELATIONS ACT IN WHICH THE APPLICANT SEEKS A DECLARATION THAT IT HAS ACQUIRED THE RIGHTS, PRIVILEGES AND DUTIES OF ITS PREDECESSOR AUTOMATIC VENDING EMPLOYEES UNION, BY REASON OF A MERGER, AMALGAMATION OR A TRANSFER OF JURISDICTION.

3. ON MAY 28, 1963, THE BOARD ISSUED A CERTIFICATE TO AUTOMATIC VENDING EMPLOYEES UNION, HEREINAFTER REFERRED TO AS "EMPLOYEES UNION". THE CERTIFICATE DESIGNATES EMPLOYEES UNION AS BARGAINING AGENT FOR ALL EMPLOYEES OF NATIONAL AUTOMATIC VENDING COMPANY LIMITED IN METROPOLITAN TORONTO. SUBSEQUENT TO THE ISSUANCE OF THE CERTIFICATE, THE NAME OF THE COMPANY WAS CHANGED TO NAVCO FOOD SERVICES LIMITED (FORMERLY NATIONAL AUTOMATIC VENDING COMPANY LIMITED), HEREINAFTER REFERRED TO AS "NAVCO". IT IS AGREED THAT NO SIGNIFICANCE ATTACHES TO THE CHANGE OF NAME INSOFAR AS THE PRESENT APPLICATION IS CONCERNED.

4. FOLLOWING CERTIFICATION NAVCO AND EMPLOYEES UNION ENTERED INTO TWO SUCCESSIVE COLLECTIVE AGREEMENTS COVERING ALL EMPLOYEES OF THE COMPANY IN METROPOLITAN TORONTO WITH EXCEPTIONS NOT HERE RELEVANT. THE LAST OF THESE AGREEMENTS EXPIRES ON THE 31ST OF DECEMBER, 1971.

5. THE INTERVENER CLAIMS TO HOLD BARGAINING RIGHTS FOR EMPLOYEES OF NAVCO WORKING AT THE CAFETERIA IN THE TIP TOP TAILORS BUILDING METROPOLITAN TORONTO. THE APPLICANT DISPUTES THE INTERVENER'S RIGHT TO BE HEARD IN THIS APPLICATION WHICH IT ARGUES SHOULD BE CONFINED TO A DECLARATION WITH RESPECT TO THE APPLICANT'S SUCCESSORSHIP WITHOUT DEFINITION OF THE RIGHTS INVOLVED. THE APPLICANT MAINTAINS THAT THE INTERVENER HAS NO STATUS IN THESE PARTICULAR PROCEEDINGS. THE INTERVENER REQUESTS THE BOARD TO CONSIDER ITS SUBMISSIONS WITH RESPECT TO DEFINING THE SCOPE OF THE RIGHTS TO WHICH THE APPLICANT SEEKS TO

SUCCEED, BECAUSE TO DEAL WITH THE SUCCESSOR QUESTION WITHOUT DEALING WITH THE SCOPE OF THE BARGAINING UNITS, LEAVES A VITAL QUESTION UN-ANSWERED AND THEREFORE IN ORDER TO AVOID A MULTIPLICITY OF PROCEEDINGS THE BOARD OUGHT TO DEAL WITH THE QUESTION AS PART OF THE PRESENT ISSUES.

6. IT IS NOT USUAL FOR THE BOARD IN APPLICATIONS UNDER SECTION 47 TO DEFINE THE RIGHTS, DUTIES AND RESPONSIBILITIES PASSING ON SUCCESSION, ALTHOUGH IN THE SPARTON OF CANADA LIMITED CASE, OLRB MONTHLY REPORT, DECEMBER 1969, P. 1133, IT DID SO AT THE REQUEST OF THE PARTIES. THE CONFLICT HERE, HOWEVER, IS BETWEEN CONTESTING UNIONS AND NOT BETWEEN THE EMPLOYER AND THE WOULD BE SUCCESSOR UNION. THE PRESENT PROBLEM ALSO DEALS RATHER WITH THE BARGAINING UNIT TO WHICH THOSE MATTERS ARE TO APPLY THAN WITH A DEFINITION OF THE RIGHTS, DUTIES AND RESPONSIBILITIES THEMSELVES. IT IS A QUESTION AS TO WHOM THOSE MATTERS EXTEND, WHATEVER THEY MAY BE, RATHER THAN ONE DEALING WITH THEIR DEFINITION. THE INTERVENTION IS IN THE NATURE OF THE TYPE OF APPLICATION CONTEMPLATED IN SECTION 66(12) OF THE ACT. IT IS OUR OPINION THAT BECAUSE OF THE PECULIAR CIRCUMSTANCES OF THE CASE AND IN ORDER TO AVOID THE NECESSITY OF FURTHER APPLICATIONS ON THE POINT, WE SHOULD DEAL WITH THE MATTER RAISED BY THE INTERVENER NOW.

7. THE CLAIM OF THE INTERVENER IS BASED UPON THE FOLLOWING CIRCUMSTANCES. FROM IN OR ABOUT 1956, THE INTERVENER HAD BEEN BARGAINING AGENT FOR A GROUP OF EMPLOYEES AT THE CAFETERIA IN THE TIP TOP TAILORS BUILDING EMPLOYED BY WALFOODS LIMITED AND WALFOODS LIMITED, A DIVISION OF AUTOMATIC CANTEEN COMPANY OF CANADA LIMITED. NEITHER OF THESE COMPANIES HAS IN ANY WAY CORPORATE CONNECTIONS WITH NAVCO. THE INTERVENER ENTERED INTO A SERIES OF COLLECTIVE AGREEMENTS WITH THE FOREGOING CORPORATIONS. ONE OF THESE AGREEMENTS, MADE BETWEEN THE INTERVENER AND WALFOODS LIMITED, A DIVISION OF AUTOMATIC CANTEEN COMPANY OF CANADA LIMITED, WAS TO RUN FROM AUGUST 13TH, 1962 TO AUGUST 13TH, 1964 AND FROM YEAR TO YEAR THEREAFTER SUBJECT TO NOTICE. IT COVERED EMPLOYEES AT THE TIP TOP TAILORS BUILDING CAFETERIA.

8. THE GRANTING OF THE CERTIFICATE ON MAY 28TH, 1963 HAD, OF COURSE, NO EFFECT UPON THE RELATIONSHIP DESCRIBED IN THE PRECEDING PARAGRAPH, SINCE AT THAT TIME THE EMPLOYEES AND THE UNION, IN EACH CASE, WERE ENTIRELY DIFFERENT.

9. IN JULY OF 1963, HOWEVER, NAVCO TOOK OVER THE OPERATION OF THE CAFETERIA AT THE TIP TOP TAILORS BUILDING AND THE PRESIDENT OF THE COMPANY, WHICH WAS STILL KNOWN AS NATIONAL AUTOMATIC VENDING COMPANY LIMITED, SENT THE FOLLOWING LETTER DATED JULY 2ND, 1963 TO MR. WILLIAM KITCHING, BUSINESS AGENT OF THE INTERVENER:

"DEAR MR. KITCHING:

THANK YOU VERY MUCH FOR YOUR CO-OPERATION
IN DISCUSSING YOUR COLLECTIVE-AGREEMENT WITH THE
EMPLOYEES OF TIP TOP TAILORS' CAFETERIA.

AS STATED IN OUR MEETING, NATIONAL
AUTOMATIC VENDING COMPANY LIMITED WILL HONOUR THE
EXISTING AGREEMENT BETWEEN YOUR LOCAL AND THE
OPERATOR OF THE FOOD CONCESSION AT TIP TOP TAILORS -
WHICH WILL BE OUR COMPANY AFTER JULY 19TH, 1963. IT
IS UNDERSTOOD THAT THE COLLECTIVE-AGREEMENT WILL BE
EXTENDED FOR AN ADDITIONAL YEAR, MAKING THE TERMINAL
DATE AUGUST 13TH, 1965. IT IS ALSO UNDERSTOOD THAT
ALL OUR EMPLOYEES IN THE CAFETERIA AT TIP TOP TAILORS
WILL BE UNDER THIS COLLECTIVE-AGREEMENT.

WE WOULD APPRECIATE A LETTER TO EXPLAIN
THE COMPLETION OF THIS AGREEMENT TO ALL OF THE VARIOUS
UNION LOCALS INVOLVED AT TIP TOP TAILORS, AND TO
MR. I. J. HAMADE, SECRETARY OF THE TORONTO UNION LABEL
COUNCIL.

I AM TAKING THE LIBERTY OF SENDING A COPY
OF THIS LETTER TO MR. E. DUNKELMAN OF TIP TOP TAILORS,
SO THAT WORK MAY PROGRESS IMMEDIATELY ON THE CHANGEOVER
OF MANAGEMENT.

WE TRUST THIS WILL REMAIN A LONG AND HAPPY
AGREEMENT.

YOURS VERY TRULY,
NATIONAL AUTOMATIC VENDING COMPANY LIMITED
ALBERT SIEGEL,
PRESIDENT."

10. THESE PARTIES DID IN FACT CONCLUDE AN AGREEMENT DATED JULY
2ND, 1963 COVERING EMPLOYEES OF NAVCO EMPLOYED AT THE CAFETERIA IN
THE TIP TOP BUILDING. THE EXPIRY DATE WAS STATED TO BE AUGUST 13TH, 1965.
FURTHER AGREEMENTS WERE SIGNED WITH RESPECT TO THE SAME BARGAINING
UNIT IN NOVEMBER 1965 AND NOVEMBER 1967. THE LATTER AGREEMENT WAS TO
EXPIRE ON THE 30TH DAY OF NOVEMBER 1969 AND FROM YEAR TO YEAR THERE-
AFTER SUBJECT TO NOTICE. NOTICE WAS SERVED ON OCTOBER 20TH, 1969.

11. AT THE TIME THESE AGREEMENTS WERE ENTERED INTO, THE EMPLOYEES
UNION HELD BARGAINING RIGHTS FOR ALL EMPLOYEES OF NAVCO IN METROPOLITAN
TORONTO BY VIRTUE OF THE CERTIFICATE ISSUED BY THE BOARD ON MAY 28TH,
1963. THE PERSONS EMPLOYED AT THE TIP TOP CAFETERIA BECAME PART OF THE

BARGAINING UNIT DESCRIBED IN THAT CERTIFICATE ON THE 19TH OF JULY, 1963, WHEN ACCORDING TO THE LETTER, NAVCO TOOK OVER THE OPERATION OF THE TIP TOP CAFETERIA. THERE WAS NO EVIDENCE OR ARGUMENT IN THESE PRESENT PROCEEDINGS THAT A SALE OF A BUSINESS TOOK PLACE BETWEEN NAVCO AND AUTOMATIC CANTEEN COMPANY OF CANADA LIMITED WITH RESPECT TO THE CATERING BUSINESS SO AS TO BRING THE MATTER WITHIN THE PURVIEW OF SECTION 47A OF THE ACT. THE EVIDENCE, IN FACT, WOULD INDICATE THAT AUTOMATIC CANTEEN COMPANY OF CANADA LIMITED'S CONTRACT WITH TIP TOP TAILORS TERMINATED IN 1963 AND THE CONCESSION WAS THEN LET DIRECTLY TO NAVCO BY TIP TOP TAILORS.

12. HAVING REGARD TO ALL OF THE FOREGOING, IT IS OUR OPINION THAT THE LETTER OF JULY 2ND, 1963 AND THE AGREEMENT BETWEEN NAVCO AND THE INTERVENER BEARING THE SAME DATE, ALTHOUGH THEY RELATE TO FUTURE EMPLOYEES, ARE, NEVERTHELESS, IN DIRECT CONTRAVENTION OF THE PROVISIONS OF SECTION 51 OF THE LABOUR RELATIONS ACT. SECTION 51 IS AS FOLLOWS:

51. (1) NO EMPLOYER, EMPLOYERS' ORGANIZATION OR PERSON ACTING ON BEHALF OF AN EMPLOYER OR AN EMPLOYERS' ORGANIZATION SHALL, SO LONG AS A TRADE UNION CONTINUES TO BE ENTITLED TO REPRESENT THE EMPLOYEES IN A BARGAINING UNIT, BARGAIN WITH OR ENTER INTO A COLLECTIVE AGREEMENT WITH ANY PERSON OR ANOTHER TRADE UNION OR A COUNCIL OF TRADE UNIONS ON BEHALF OF OR PURPORTING, DESIGNED OR INTENDED TO BE BINDING UPON THE EMPLOYEES IN THE BARGAINING UNIT OR ANY OF THEM.

(2) NO TRADE UNION, COUNCIL OF TRADE UNIONS OR PERSON ACTING ON BEHALF OF A TRADE UNION OR COUNCIL OF TRADE UNIONS SHALL, SO LONG AS ANOTHER TRADE UNION CONTINUES TO BE ENTITLED TO REPRESENT THE EMPLOYEES IN A BARGAINING UNIT, BARGAIN WITH OR ENTER INTO A COLLECTIVE AGREEMENT WITH AN EMPLOYER OR AN EMPLOYERS' ORGANIZATION ON BEHALF OF OR PURPORTING, DESIGNED OR INTENDED TO BE BINDING UPON THE EMPLOYEES IN THE BARGAINING UNIT OR ANY OF THEM.

THE STATUS WHICH THE INTERVENER CLAIMS IN THESE PROCEEDINGS IS FOUND-ED UPON A CLEAR VIOLATION OF THE ABOVE SECTION BY NAVCO AND THE INTER- VENER AND CONSEQUENTLY HAD NO VALIDITY AT THE TIME THE ARRANGEMENTS REVIEWED ABOVE WERE FIRST ENTERED UPON BY THOSE PARTIES. IN OUR OPIN- ION, THE SUBSEQUENT RELATIONSHIP BETWEEN THESE PARTIES AS EVIDENCED BY THE SERIES OF COLLECTIVE AGREEMENTS, CANNOT BE SAID TO CURE THE INITIAL ILLEGALITY OF THEIR ASSOCIATION. THE INTERVENER WAS NOT ENTITLED TO REPRESENT THE EMPLOYEES WHOM IT PURPORTED TO REPRESENT AT THE TIME OF THE FIRST AGREEMENT WITH NAVCO AND TIME CANNOT CURE A DEFECT OF SUCH

FUNDAMENTAL IMPROPRIETY. WE, THEREFORE, FIND THAT THE INTERVENER HAD NO INITIAL AND HAS NO PRESENT STATUS AS BARGAINING AGENT FOR ANY EMPLOYEES OF NAVCO IN THESE PROCEEDINGS.

13. WE NOW PROPOSE TO DEAL WITH THE APPLICANT'S REQUEST FOR A DECLARATION UNDER SECTION 47. THE TEXT OF SECTION 47 IS AS FOLLOWS:

47. (1) WHERE A TRADE UNION CLAIMS THAT BY REASON OF A MERGER OR AMALGAMATION OR A TRANSFER OF JURISDICTION IT IS THE SUCCESSOR OF A TRADE UNION THAT AT THE TIME OF THE MERGER, AMALGAMATION OR TRANSFER OF JURISDICTION WAS THE BARGAINING AGENT OF A UNIT OF EMPLOYEES OF AN EMPLOYER AND ANY QUESTION ARISES IN RESPECT OF ITS RIGHT TO ACT AS THE SUCCESSOR, THE BOARD, IN ANY PROCEEDING BEFORE IT OR ON THE APPLICATION OF ANY PERSON OR TRADE UNION CONCERNED, MAY DECLARE THAT THE SUCCESSOR HAS OR HAS NOT, AS THE CASE MAY BE, ACQUIRED THE RIGHTS, PRIVILEGES AND DUTIES UNDER THIS ACT OF ITS PREDECESSOR, OR THE BOARD MAY DISMISS THE APPLICATION.

(2) BEFORE ISSUING A DECLARATION UNDER SUBSECTION 1, THE BOARD MAY MAKE SUCH INQUIRY, REQUIRE THE PRODUCTION OF SUCH EVIDENCE OR HOLD SUCH REPRESENTATION VOTES AS IT DEEMS APPROPRIATE.

(3) WHERE THE BOARD MAKES AN AFFIRMATIVE DECLARATION UNDER SUBSECTION 1, THE SUCCESSOR SHALL FOR THE PURPOSES OF THIS ACT BE CONCLUSIVELY PRESUMED TO HAVE ACQUIRED THE RIGHTS, PRIVILEGES AND DUTIES OF ITS PREDECESSOR, WHETHER UNDER A COLLECTIVE AGREEMENT OR OTHERWISE, AND THE EMPLOYER, THE SUCCESSOR AND THE EMPLOYEES CONCERNED SHALL RECOGNIZE SUCH STATUS IN ALL RESPECTS.

THE EVIDENCE IS THAT ON OR ABOUT JULY 9, 1970, MEMBERS OF EMPLOYEES UNION COMMENCED TO CONSIDER AFFILIATION OR TRANSFER OF RIGHTS TO THE APPLICANT. NEGOTIATIONS WERE COMMENCED WITH AN OFFICER OF THE APPLICANT AND A SPECIAL MEETING OF MEMBERS OF EMPLOYEES UNION WAS ARRANGED FOR AUGUST 18, 1970. NOTICE OF THE MEETING WAS DISTRIBUTED TO THE EMPLOYEES CONCERNED WITH THEIR PAY PACKAGES. THE NOTICE WAS IN THE FOLLOWING FORM:

"SPECIAL CALLED MEETING
OF
AUTOMATIC VENDING EMPLOYEES UNION

THE MEETING WILL BE HELD AT THE P.B.A. HALL
1330 BLOOR STREET WEST
AUGUST 18TH 1970
8:00 P.M. SHARP

THIS MEETING IS BEING CALLED TO DISCUSS THE
AFFILIATION OF THE AUTOMATIC VENDING EMPLOYEES
UNION WITH THE RETAIL CLERKS UNION AND TO VOTE
ON THE SAME."

14. MR. FULLER, AN OFFICER OF EMPLOYEES UNION, STATED THAT THERE WERE 86 EMPLOYEES IN THE UNIT AND THAT 27 OF THEM ATTENDED THE MEETING ON AUGUST 18TH. HE STATED THAT THERE WAS A DISCUSSION AT THE MEETING WITH RESPECT TO AFFILIATION AND THAT ALL MEMBERS TOOK PART. HIS EVIDENCE IS THAT THE FOLLOWING MOTION WAS PUT TO THE MEETING: "THAT WE HAVE A VOTE ON WHETHER TO AFFILIATE WITH THE RETAIL CLERKS". HE STATED THAT THE VOTE WAS UNANIMOUS FOR AFFILIATION.

15. A SECOND MEETING WAS SET UP FOR AUGUST 25TH, 1970 FOR EMPLOYEES IN THE BARGAINING UNIT WHO HAD BEEN AT WORK ON AUGUST 18TH. SEVENTEEN EMPLOYEES ATTENDED THIS MEETING WHICH WAS HELD AT THE CONROY HOTEL. THE MOTION PUT TO THIS MEETING WAS "THAT WE AFFILIATE WITH THE RETAIL CLERKS". THE VOTE WAS UNANIMOUS IN FAVOUR OF THE MOTION.

16. THERE IS EVIDENCE THAT THE QUESTION OF FUNDS WAS RAISED AT THE MEETINGS. "EVERYTHING" THE WITNESS SAID "THAT WENT WITH AFFILIATION". IT WAS GIVEN IN EVIDENCE ALSO THAT FUNDS WERE TRANSFERRED TO THE APPLICANT SOMETIME AFTER THE MEETINGS. ON WHAT AUTHORITY THIS WAS DONE IS NOT MADE CLEAR. THE FOREGOING ANSWER OF THE WITNESS AND THE SUBSEQUENT TRANSFER OF FUNDS WOULD APPEAR TO BE MORE CONSISTENT WITH MERGER AND AMALGAMATION THAN WITH AFFILIATION. FULLER ALSO TESTIFIED THAT AFTER AUGUST 25TH THE AGREEMENT BETWEEN NAVCO AND EMPLOYEES UNION WAS CARRIED ON AND THAT HE HAD HAD CERTAIN DEALINGS WITH THE COMPANY UNDER THAT AGREEMENT. HE SAID GRIEVANCE WERE FILED AND HE HAD REPRESENTED THE EMPLOYEES WITH RESPECT TO THEM. BE THAT AS IT MAY, THE EVIDENCE IS QUITE CLEAR THAT THE QUESTION OF AMALGAMATION, MERGER OR TRANSFER OF JURISDICTION, THE ONLY ACTIONS CONTEMPLATED BY SECTION 47 WERE NOT, AS SUCH, MADE THE SUBJECT OF A MOTION PLACED BEFORE EITHER OF THE MEETINGS. THE ONLY MOTIONS PASSED WERE WITH RESPECT TO THE QUESTION AS TO WHETHER EMPLOYEES UNION WOULD AFFILIATE WITH THE APPLICANT HEREIN.

17. IN OUR OPINION, THE POWER OF THE BOARD TO ISSUE A DECLARATION UNDER SECTION 47 IS EXERCISABLE ONLY WHERE THERE HAS BEEN A MERGER OR AMALGAMATION OR A TRANSFER OF JURISDICTION (AS TO THE MEANING ATTACHED TO THESE TERMS, SEE ONTARIO HYDRO EMPLOYEES UNION AND ONTARIO HYDRO-ELECTRIC 57 CLLC ¶18,080). THE SECTION MAKES NO MENTION OF AFFILIATION WHICH HAS ITS OWN MEANING. WHEN ONE CONSIDERS THE NORMAL IMPLICATIONS OF AFFILIATION, THE OMISSION IS READILY UNDERSTANDABLE. AFFILIATION CLEARLY CONNOTES THE CONTINUING SEPARATE IDENTITIES OF THE AFFILIATING BODIES.

18. WE ARE NOT SATISFIED ON THE EVIDENCE BEFORE US THAT THERE HAS BEEN A MERGER OR AMALGAMATION OR, IF INDEED IT IS APPLICABLE, A TRANSFER OF JURISDICTION BETWEEN THE APPLICANT AND THE PREDECESSOR TRADE UNION. THAT BEING THE CASE, WE ARE OF THE OPINION THAT WE CANNOT MAKE THE DECLARATION SOUGHT BY THE APPLICANT. (ONTARIO HYDRO EMPLOYEES UNION AND ONTARIO HYDRO-ELECTRIC, SUPRA). HAVING SAID THIS, WE WISH TO MAKE IT CLEAR THAT THE ISSUE IN THESE MATTERS TURNS NOT MERELY UPON THE NOMENCLATURE USED BY THE PARTIES TO DESCRIBE THE TRANSACTION, BUT UPON THE NATURE OF THE TRANSACTION ITSELF AS REVEALED BY THE EVIDENCE. IF THIS IS SUFFICIENTLY STRONG, IT WILL OVERCOME THE IMPLICATIONS AND PRESUMPTIONS ATTACHING TO THE PARTICULAR TERM EMPLOYED BY THE PARTIES. SUCH IS NOT THE CASE HERE, HOWEVER.

19. WE WOULD ALSO POINT OUT THAT THE CONSTITUTION OF EMPLOYEES UNION CONTAINS NO PROVISION GOVERNING MERGER, AMALGAMATION, TRANSFER OF JURISDICTION OR AFFILIATION. IT PROVIDES FOR AMENDMENT TO THE CONSTITUTION. THERE IS NO EVIDENCE BEFORE THE BOARD INDICATING THAT RECOURSE WAS HAD TO THAT PROVISION. THE ATTENTION OF THE APPLICANT IS DIRECTED TO ASTGEN ET AL V. SMITH ET AL, 68 CLLC ¶14,118.

20. HAVING REGARD TO ALL OF THE FOREGOING, THE APPLICATION IS DISMISSED.

18933-70-U: DURCARD MECHANICAL CONTRACTORS LTD. (APPLICANT) V. KEN MOONEY AND STAN CARON (RESPONDENTS).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS P. J. O'KEEFFE AND J.E.C. ROBINSON, Q.C..

APPEARANCES AT THE HEARING: W. G. PHELPS AND DIRK BEISHUIZEN FOR THE APPLICANT, W. V. SASSO, KEN MOONEY, STAN CARON AND JOHN WITYK FOR THE RESPONDENTS.

DECISION OF J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBER J.E.C. ROBINSON, Q.C.:
FEBRUARY 9, 1971.

1. THIS IS AN APPLICATION FOR A DECLARATION THAT THE RESPONDENTS

ENGAGED IN AN UNLAWFUL STRIKE. THE RESPONDENTS CALLED NO EVIDENCE AND ACCORDINGLY THE FACTS OF THIS CASE ARE NOT IN DISPUTE.

2. THE EVIDENCE ESTABLISHED THAT THE APPLICANT IS A PARTY TO A COLLECTIVE AGREEMENT WITH LOCAL UNION 221 OF THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA WHICH IS TO EXPIRE ON APRIL 30, 1971. THE APPLICANT IS ENGAGED IN A PROJECT KNOWN AS THE ELROND COLLEGE PROJECT AT KINGSTON AND THIS PROJECT IS WITHIN THE GEOGRAPHIC AREA COVERED BY THE COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND LOCAL UNION 221. ON JANUARY 22, 1971, THE APPLICANT REQUESTED LOCAL UNION 221 TO SUPPLY PLUMBERS TO WORK ON THE ELROND PROJECT IN ACCORDANCE WITH THE COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND LOCAL UNION 221. ON MONDAY, JANUARY 25, AT ABOUT 8:00 A.M., THE RESPONDENTS ATTENDED AT THE FIELD OFFICE OF THE APPLICANT WHERE THEY WERE INTERVIEWED BY THE APPLICANT'S FIELD SUPERINTENDENT. THE RESPONDENTS PRESENTED REFERRAL SLIPS ISSUED BY LOCAL UNION 221 WHICH DIRECTED THE RESPONDENTS TO REPORT TO WORK AT ELROND COLLEGE ON JANUARY 25, 1971. EACH OF THE RESPONDENTS COMPLETED AN EMPLOYEE TAX DEDUCTION RETURN, FORM TD1, AT THE REQUEST OF THE APPLICANT'S FIELD SUPERINTENDENT AND EACH WAS HIRED BY THE FIELD SUPERINTENDENT ON JANUARY 25, 1971. THE APPLICANT'S FIELD SUPERINTENDENT THEN DIRECTED THE RESPONDENTS TO PERFORM CERTAIN WORK ON THE ELROND PROJECT AND AT THE SAME TIME MENTIONED THAT THE PROJECT WAS BEING PICKETED BY MEMBERS OF OTHER TRADE UNIONS WHO HAD A DISPUTE WITH ANOTHER EMPLOYER WHO WAS ENGAGED ON THE PROJECT. THE DISPUTE AND THE PICKETING HAD NOTHING TO DO WITH THE APPLICANT. WHILE THERE WAS NO EVIDENCE AS TO WHETHER OR NOT THE PICKETING BY THE OTHER TWO TRADE UNIONS WAS LAWFUL, WE WILL ASSUME FOR THE PURPOSE OF THIS APPLICATION THAT THE OTHER TWO TRADE UNIONS WERE ENGAGED IN A LAWFUL STRIKE AND THAT THEIR PICKETING WAS ACCORDINGLY LAWFUL.

3. WHEN INFORMED OF THE PICKETING, MR. CARON, ONE OF THE RESPONDENTS, STATED THAT HE WAS NOT PREPARED TO CROSS THE PICKET LINE ON THE PROJECT AND WOULD THEREFORE NOT PERFORM THE WORK HE WAS DIRECTED TO DO. MR. MOONEY, THE OTHER RESPONDENT, MADE NO COMMENT AND DID NOT INDICATE THAT HE WAS OF A DIFFERENT VIEW THAN MR. CARON. BOTH MR. CARON AND MR. MOONEY DID NOT CROSS THE PICKET LINE AND ACCORDINGLY FAILED TO COMMENCE THE WORK THEY WERE DIRECTED TO DO. NEITHER MR. MOONEY NOR MR. CARON HAS PERFORMED WORK AT THE JOB SITE SINCE THAT TIME.

4. ON THE EVIDENCE BEFORE US, WE FIND THAT THE RESPONDENTS WERE HIRED BY THE APPLICANT ON JANUARY 25, 1971 AND WERE COVERED BY THE COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND LOCAL UNION 221 AT ALL RELEVANT TIMES. WE FURTHER FIND THAT MR. CARON ADVISED THE APPLICANT THAT HE WOULD NOT CROSS THE PICKET LINE THAT HAD BEEN ESTABLISHED BY OTHER TRADE UNIONS AND PERFORM THE WORK WHICH HE HAD

BEEN DIRECTED TO DO. IN VIEW OF THE FACT THAT MR. MOONEY WAS PRESENT AT THE TIME MR. CARON REFUSED TO CROSS THE PICKET LINE AND PERFORM WORK AND ALSO FAILED TO CROSS THE PICKET LINE AND COMMENCE THE WORK HE HAD BEEN DIRECTED TO DO, WE ARE LED TO THE INESCAPABLE INFERENCE THAT MR. MOONEY CONCURRED IN MR. CARON'S DECISION AND REFUSED TO COMMENCE WORK FOR THE SAME REASON AS GIVEN BY MR. CARON.

5. THERE IS NOTHING IN THE COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND LOCAL UNION 221 WHICH AUTHORIZES THE APPLICANT'S EMPLOYEES TO HONOUR PICKET LINES ESTABLISHED BY OTHER TRADE UNIONS. SECTION 54(1) OF THE LABOUR RELATIONS ACT READS AS FOLLOWS:

WHERE A COLLECTIVE AGREEMENT IS IN OPERATION,
NO EMPLOYEE BOUND BY THE AGREEMENT SHALL STRIKE
AND NO EMPLOYER BOUND BY THE AGREEMENT SHALL
LOCK OUT SUCH AN EMPLOYEE.

SECTION 1(1)(i) OF THE LABOUR RELATIONS ACT DEFINES A STRIKE AS FOLLOWS:

IN THIS ACT,
"STRIKE" INCLUDES A CESSATION OF WORK, A
REFUSAL TO WORK OR TO CONTINUE TO WORK BY
EMPLOYEES IN COMBINATION OR IN CONCERT OR
IN ACCORDANCE WITH A COMMON UNDERSTANDING,
OR A SLOW-DOWN OR OTHER CONCERTED ACTIVITY
ON THE PART OF EMPLOYEES DESIGNED TO RESTRICT
OR LIMIT OUTPUT;

6. SINCE THE EVIDENCE CLEARLY ESTABLISHED THAT THERE WAS A REFUSAL BY THE RESPONDENTS TO WORK BECAUSE THEY DID NOT WISH TO CROSS A PICKET LINE ESTABLISHED BY OTHER TRADE UNIONS, SUCH REFUSAL TO WORK WAS ACCORDINGLY IN COMBINATION OR IN CONCERT OR IN ACCORDANCE WITH A COMMON UNDERSTANDING, AND THEREFORE THE RESPONDENTS ENGAGED IN A STRIKE WITHIN THE MEANING OF SECTION 1(1)(i) OF THE LABOUR RELATIONS ACT. WHILE THERE IS NO EVIDENCE THAT THE RESPONDENTS HAD REACHED A PRIOR UNDERSTANDING WITH ONE ANOTHER THAT THEY WOULD NOT CROSS A PICKET LINE IF ONE HAD BEEN ESTABLISHED, THE EVIDENCE LEADS US TO THE INESCAPABLE CONCLUSION THAT THEIR REFUSAL TO WORK ON THE MORNING OF JANUARY 25, 1971 WAS BECAUSE OF THE PICKET LINE THAT WAS ESTABLISHED BY THE OTHER TRADE UNIONS. SINCE THEIR REFUSAL WAS FOR THE SAME REASON AND WAS ANNOUNCED OR INDICATED AT THE SAME TIME, THERE CAN BE NO SERIOUS ARGUMENT AGAINST THE PROPOSITION THAT THEY REFUSED TO COMMENCE WORK IN COMBINATION OR IN CONCERT OR IN ACCORDANCE WITH A COMMON UNDERSTANDING. SINCE THE STRIKE ENGAGED IN BY THE RESPONDENTS WHICH COMMENCED ON JANUARY 25, 1971 WAS DURING THE PERIOD OF OPERATION OF THE COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND LOCAL UNION 221 WHICH WAS BINDING UPON THEM, SUCH STRIKE WAS ACCORDINGLY CONTRARY TO

SECTION 54(1) OF THE LABOUR RELATIONS ACT.

7. WHILE IT IS RECOGNIZED THAT IT IS A COMMON PRACTICE, ESPECIALLY IN THE CONSTRUCTION TRADES, FOR ONE TRADE UNION TO HONOUR THE PICKET LINE THAT HAS BEEN ESTABLISHED BY ANOTHER TRADE UNION, ESPECIALLY WHERE THAT PICKET LINE IS LAWFUL, THERE IS NOTHING IN THE LABOUR RELATIONS ACT WHICH AUTHORIZES SUCH PRACTICE. ON THE CONTRARY, SECTION 54(1) MAKES IT ABUNDANTLY CLEAR THAT NO EMPLOYEE BOUND BY A COLLECTIVE AGREEMENT, AS THE RESPONDENTS WERE BOUND, SHALL STRIKE.

8. THE EMPLOYEES WHO ARE BOUND BY THE PROVISIONS OF A COLLECTIVE AGREEMENT ARE SUBJECT TO THE STRICTURES OF THE COLLECTIVE AGREEMENT AND HAVE THE ADVANTAGES PROVIDED UNDER THE COLLECTIVE AGREEMENT. HOWEVER, SUCH EMPLOYEES ARE NOT BOUND BY COLLECTIVE AGREEMENTS BETWEEN OTHER UNIONS AND OTHER EMPLOYERS AND ARE ACCORDINGLY NOT SUBJECT TO THE PROVISIONS OF SUCH AGREEMENTS NOR CAN THEY TAKE ADVANTAGE OF PROVISIONS OF COLLECTIVE AGREEMENTS THAT ARE NOT BINDING UPON THEM. ACCORDINGLY, EVEN THOUGH THE PICKET LINES THAT WERE ESTABLISHED BY THE OTHER TRADE UNIONS ON THE ELROND PROJECT MAY BE LAWFUL PICKET LINES, THE RESPONDENT'S ACTION OF HONOURING SUCH PICKET LINES IN ORDER TO SUPPORT THE DEMANDS OF MEMBERS OF OTHER TRADE UNIONS IS NOT A RIGHT GIVEN UNDER THE LABOUR RELATIONS ACT. WHERE EMPLOYEES REFUSE TO PERFORM WORK FOR THE REASONS DESCRIBED ABOVE, SUCH REFUSAL IS CONTRARY TO THE SPIRIT AND INTENT OF SECTION 54(1) OF THE ACT.

9. WE ACCORDINGLY DECLARE THAT THE RESPONDENTS ENGAGED IN A STRIKE AGAINST THE APPLICANT COMMENCING ON JANUARY 25, 1971 AND THAT SUCH STRIKE IS UNLAWFUL.

DECISION OF BOARD MEMBER P. J. O'KEEFFE: FEBRUARY 9, 1971.

I DISSENT FOR REASONS TO BE GIVEN IN WRITING.

18594-70-U: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. AGILIS CORPORATION LIMITED CARRYING ON BUSINESS UNDER THE FIRM NAME AND STYLE OF SUBURBAN SANITATION (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS O. HODGES AND H. F. IRWIN.

DECISION OF THE BOARD: FEBRUARY 17, 1971.

1. BY AN APPLICATION DATED OCTOBER 26, 1970, THE APPLICANT APPLIED TO THE BOARD FOR CONSENT TO INSTITUTE A PROSECUTION OF THE RESPONDENT.

2. THE APPLICATION WAS HEARD ON NOVEMBER 10, 1970. BY A DECISION DATED NOVEMBER 19, 1970, THE BOARD GAVE CONSENT TO THE APPLICANT TO PROSECUTE THE RESPONDENT. MORE PARTICULARLY, THE BOARD CONSENTED TO THE INSTITUTION OF A PROSECUTION OF THE RESPONDENT FOR THE ALLEGED OFFENCE OF HAVING FAILED TO BARGAIN IN GOOD FAITH AND MAKE EVERY REASONABLE EFFORT TO MAKE A COLLECTIVE AGREEMENT, CONTRARY TO SECTION 12 OF THE LABOUR RELATIONS ACT. THE DATE OF THE ALLEGED OFFENCE SPECIFIED IN THE BOARD'S CONSENT WAS ON AND AFTER OCTOBER 19, 1970.

3. BY LETTER DATED FEBRUARY 3, 1971, COUNSEL FOR THE RESPONDENT ADVISED THE BOARD THAT, AS OF THAT DATE, NO PROSECUTION HAD BEEN COMMENCED. THE LETTER OF COUNSEL READS IN PART:

BY FAILING TO PROCEED THE APPLICANT UNION IS NOT ACTING IN GOOD FAITH. IT IS NOT CONTEMPLATED BY THE LABOUR RELATIONS ACT THAT PROCEEDINGS OF THIS SORT BE HELD BACK FOR LEVERAGE OR BARGAINING PURPOSES IN THE COURSE OF DISPUTES. IN MY VIEW IT IS IMPLICIT IN THE CONSENT GRANTED BY THE ONTARIO LABOUR RELATIONS BOARD THAT THE UNION PROCEED DILIGENTLY AND IN GOOD FAITH. IN THIS INSTANCE THIS UNION HAS FAILED TO ACT IN THAT MANNER.

COUNSEL FOR THE RESPONDENT IS REQUESTING THAT THE BOARD, PURSUANT TO SECTION 79(1) OF THE ACT, RESCIND OR VARY THE CONSENT TO INSTITUTE A PROSECUTION GRANTED IN ITS DECISION DATED NOVEMBER 19, 1970. COUNSEL FURTHER REQUESTS THAT THE BOARD SCHEDULE A HEARING FOR THE PURPOSE OF PERMITTING THE PARTIES TO MAKE THEIR REPRESENTATIONS WITH RESPECT TO HIS REQUEST.

4. IN GRANTING LEAVE TO THE APPLICANT TO INSTITUTE A PROSECUTION OF THE RESPONDENT BY ITS DECISION OF NOVEMBER 19, 1970, THE BOARD, FOLLOWING ITS INVARIABLE PRACTICE, PLACED NO REQUIREMENT OR TIME PERIOD WITHIN WHICH THE APPLICANT HAD TO PURSUE OR ACT ON THE CONSENT GRANTED. PURSUANT TO THE SUMMARY CONVICTIONS ACT R.S.O. 1960 c. 387, AS AMENDED, AND THE CRIMINAL CODE, HOWEVER, THE APPLICANT MUST COMMENCE A PROCEEDING NOT LATER THAN SIX MONTHS AFTER THE DATE OR DATES UPON WHICH THE OFFENCE OR OFFENCES ARE ALLEGED TO HAVE OCCURRED.

5. THE BOARD IS OF THE OPINION THAT IN HIS LETTER OF FEBRUARY 3, 1971 COUNSEL FOR THE RESPONDENT HAS CONCISELY SET FORTH HIS SUBMISSIONS IN SUPPORT OF HIS REQUEST. ASSUMING THAT TO BE THE CASE THE BOARD FEELS THAT NO USEFUL PURPOSE WOULD BE SERVED BY A FURTHER HEARING. BASED ON THE WRITTEN SUBMISSIONS OF COUNSEL FOR THE RESPONDENT AND THE WRITTEN REPLY OF COUNSEL FOR THE APPLICANT,

THE BOARD SEES NO REASON TO VARY OR REVOKE ITS DECISION OF NOVEMBER 19, 1970.

6. WE WOULD ADD THAT IN MAKING THE ABOVE DETERMINATION, WE ARE NOT DENYING TO THE RESPONDENT THE RIGHT TO APPLY FOR LEAVE TO PROSECUTE THE APPLICANT, IF THE RESPONDENT HAS REASON TO BELIEVE THAT THE APPLICANT HAS UTILIZED THE CONSENT GRANTED BY THE BOARD IN A MANNER WHICH CONSTITUTES A FAILURE TO BARGAIN IN GOOD FAITH WITHIN THE MEANING OF SECTION 12 OF THE ACT.

7. THE REQUEST MADE BY COUNSEL FOR THE RESPONDENT UNDER SECTION 79(1) OF THE ACT, HOWEVER, IS DENIED.

6-70-PH: CANADIAN UNION OF OPERATING ENGINEERS - LOCAL 101 (APPLICANT) v. (THE CORPORATION OF) THE BOARD OF GOVERNORS OF THE RIVERDALE HOSPITAL (RESPONDENT).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND J.E.C. ROBINSON, Q.C..

APPEARANCES AT THE HEARING: KEITH GILBERT, JOHN KEREKES AND L. F. JOHNSON FOR THE APPLICANT; I.H. MCGOWAN AND L. H. ABRAMS FOR THE RESPONDENT.

DECISION OF O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBER O. HODGES: FEBRUARY 25, 1971.

. . .

2. THIS IS AN APPLICATION FOR CONSENT TO INSTITUTE A PROSECUTION FOR AN ALLEGED OFFENCE UNDER THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT, 1965 AND AMENDMENTS THERETO.

3. COUNSEL FOR THE RESPONDENT SUBMITTED THAT THIS WAS NOT A MATTER FOR PROSECUTION BUT THAT IT SHOULD BE DEALT WITH BY ARBITRATION. HOWEVER, AT THE OUTSET OF THE HEARING, THE APPLICANT ADVISED THE BOARD THAT NOTWITHSTANDING THAT IT HAD PROCEEDED TO ARBITRATION IT HAD INSTRUCTED ITS NOMINEE TO WITHDRAW THE GRIEVANCE AND IT CONFIRMED THIS WITHDRAWAL ORALLY AT THE HEARING. IN ANY EVENT IN THE INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS AND LOCAL LODGE 1246 v. FRANKLIN MANUFACTURING COMPANY (CANADA) LIMITED CASE, JUNE 1970, OLRB MTHLY. REP., 341 THE BOARD DISTINGUISHED BETWEEN AN OFFENCE UNDER THE LABOUR RELATIONS ACT AND A PROCEEDING BY WAY OF ARBITRATION AND CONCLUDED AS FOLLOWS:

"APPLYING THAT CONSIDERATION WE ARE OF THE OPINION THAT THE REMEDY BY WAY OF PROSECUTION HAS A DIFFERENT PURPOSE FROM THE ARBITRATION PROCEEDING AND THAT WE SHOULD NOT REFUSE CONSENT ON THE SOLE BASIS THAT THIS MATTER IS PROCEEDING TO ARBITRATION."

WE SEE NO REASON IN THIS CASE TO DEPART FROM THE DECISION OF THIS BOARD IN THE FRANKLIN MANUFACTURING COMPANY (CANADA) LIMITED CASE SUPRA.

4. HAVING REGARD TO THE EVIDENCE AND THE SUBMISSIONS OF THE PARTIES THE BOARD CONSENTS TO THE INSTITUTION OF A PROSECUTION FOR THE FOLLOWING OFFENCE ALLEGED TO HAVE BEEN COMMITTED:

(1) THAT THE RESPONDENT DID CONTRAVENE SECTION 10 OF THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT, 1965 AND AMENDMENTS THERETO.

5. THE APPROPRIATE DOCUMENTS WILL ISSUE.

DISSENT OF BOARD MEMBER J.E.C. ROBINSON, Q.C.: FEBRUARY 25, 1971.

1. THIS IS AN APPLICATION WHEREIN THE UNION ALLEGES THAT THE RESPONDENT HOSPITAL REFUSED TO PAY A SHOP STEWARD FOR TIME LOST IN MEETING WITH THE SAID HOSPITAL IN VIOLATION OF ARTICLE 5.04(B) OF THE COLLECTIVE AGREEMENT. THE UNION ALLEGES THAT THIS IS IN CONTRAVENTION OF SECTION 10 OF THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT, 1965.

2. THE UNION FILED A GRIEVANCE, PURPORTEDLY UNDER THE TERMS OF THE COLLECTIVE AGREEMENT, AND THE PARTIES PROCEEDED THROUGH THE VARIOUS STEPS OF THE GRIEVANCE PROCEDURE TO THE PLACE WHERE AN ARBITRATION BOARD HAD BEEN SET UP TO HEAR THE SAID GRIEVANCE. IF AN ARBITRATION BOARD HEARD THE SAID GRIEVANCE, IT COULD DETERMINE WHETHER THE SAID STEWARD WAS ENTITLED TO BE RECOMPENSED BY THE HOSPITAL FOR WAGES LOST, AND IF HE WERE SO ENTITLED, IT COULD ORDER THAT SUCH RECOMPENSE BE PAID BY THE HOSPITAL.

3. ON THE OTHER HAND, THE ONLY POWER WHICH THE LABOUR RELATIONS BOARD HAS IN THIS DISPUTE, IS THE POWER TO GRANT CONSENT TO THE INSTITUTION OF A PROSECUTION AGAINST THE HOSPITAL.

4. GRANTED CONSENT BY THIS BOARD, THE UNION WOULD BE IN A POSITION TO PROCEED BEFORE A PROVINCIAL JUDGE WHO WOULD DETERMINE WHETHER

THERE HAD BEEN A CONTRAVENTION OF SECTION 10 OF THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT, 1965. IF HE FOUND THAT THERE HAD BEEN A CONTRAVENTION AS AFORESAID, THE PROVINCIAL JUDGE COULD ONLY REGISTER A CONVICTION AGAINST THE HOSPITAL, AND IF HE SAW FIT, LEVY A FINE.

5. HE WOULD NOT, HOWEVER, BE IN A POSITION, (AS AN ARBITRATION BOARD WOULD) TO REMEDY THE CAUSE OF THE ALLEGED COMPLAINT, VIZ. TO ORDER PAYMENT TO THE UNION STEWARD FOR ANY WAGES WRONGFULLY LOST BY HIM.

6. THAT BEING SO, I AM OF THE OPINION THAT NO USEFUL PURPOSE IS SERVED IN THE GRANTING OF THE BOARD'S CONSENT TO INSTITUTE A PROSECUTION AGAINST THE RESPONDENT.

7. IT IS MY OPINION THAT IN GRANTING CONSENT, THE BOARD IS, IN EFFECT, BEING USED AS AN INSTRUMENT FOR A PURPOSE WHICH IS NOT CONDUCTIVE TO THE CONCEPTS OF LABOUR RELATIONS AND I WOULD ACCORDINGLY DISMISS THE APPLICATION.

8. IN ARRIVING AT MY CONCLUSION, I AM FULLY COGNIZANT OF THE BOARD'S EARLIER DECISION IN FRANKLIN MANUFACTURING COMPANY (CANADA) LIMITED CASE, JUNE 1970, OLRB, MTHLY, REP., 341 AND THE DISTINCTION THAT IS MADE THEREIN BETWEEN ARBITRATION PROCEEDINGS WHICH HAVE FOR THEIR OBJECT THE RECOVERY OF MONEY, OR THE ENFORCEMENT OF A RIGHT FOR THE ADVANTAGE OF THE PERSON GRIEVING, WHILE THE CONSENT TO THE INSTITUTION OF A PROSECUTION HAS FOR ITS OBJECT THE ULTIMATE PUNISHMENT OF A PUBLIC OFFENCE.

9. NOTWITHSTANDING SUCH DECISION, I HAVE GREAT DIFFICULTY IN FINDING THAT THE PUBLIC IS SERVED BY HAVING A HOSPITAL, WHICH DERIVES MUCH OF THE MONEY WHICH ENABLES IT TO OPERATE FROM PUBLIC FUNDS AND ALTRUISTIC GRANTS, BEING THE SUBJECT OF A PROSECUTION AND POSSIBLE FINE IN THE PROVINCIAL COURTS, WHEN THE SOURCE OF THE COMPLAINT CAN BEST BE REMEDIED BY RESORT TO THE ARBITRATION PROCESS.

8-70-PH: THE CANADIAN UNION OF OPERATING ENGINEERS LOCAL 101 (APPLICANT) v. CENTRAL HOSPITAL (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS J. D. BELL AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: V. McMANUS AND KIETH GILBERT FOR THE APPLICANT; ROBERT M. McCOMB AND GEORGE JOHNSON FOR THE RESPONDENT.

DECISION OF THE BOARD: FEBRUARY 17, 1971.

1. THIS IS AN APPLICATION FOR CONSENT TO INSTITUTE A PROSECU-

TION OF THE RESPONDENT FOR AN ALLEGED VIOLATION OF SECTION 10 OF THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT, 1965. THE SECTION READS AS FOLLOWS:

"NOTWITHSTANDING SUBSECTION 1 OF SECTION 59 OF THE LABOUR RELATIONS ACT, WHERE NOTICE HAS BEEN GIVEN UNDER SECTION 11 OR 40 OF THAT ACT BY OR TO A TRADE UNION THAT IS THE BARGAINING AGENT FOR A BARGAINING UNIT OF HOSPITAL EMPLOYEES TO WHICH THIS ACT APPLIES TO OR BY THE EMPLOYER OF SUCH EMPLOYEES AND NO COLLECTIVE AGREEMENT IS IN OPERATION, NO SUCH EMPLOYER SHALL, EXCEPT WITH THE CONSENT OF THE TRADE UNION, ALTER THE RATES OF WAGES OR ANY OTHER TERM OR CONDITION OF EMPLOYMENT OR ANY RIGHT, PRIVILEGE OR DUTY OF THE EMPLOYER, THE TRADE UNION OR THE EMPLOYEES, AND NO SUCH TRADE UNION SHALL, EXCEPT WITH THE CONSENT OF THE EMPLOYER, ALTER ANY TERM OR CONDITION OF EMPLOYMENT OR ANY RIGHT, PRIVILEGE OR DUTY OF THE EMPLOYER, THE TRADE UNION OR THE EMPLOYEES, UNTIL THE RIGHT OF THE TRADE UNION TO REPRESENT THE EMPLOYEES HAS BEEN TERMINATED."

2. THE APPLICANT ALLEGED THAT THE RESPONDENT, WITHOUT THE CONSENT OF THE APPLICANT, ALTERED THE RULES OR POLICY PREVIOUSLY IN EFFECT WITH RESPECT TO THE PROCEDURE TO BE FOLLOWED BY EMPLOYEES RETURNING TO WORK AFTER ILLNESS IN ORDER TO QUALIFY FOR SICK PAY.
3. THE BOARD IS SATISFIED ON THE BASIS OF ALL OF THE EVIDENCE BEFORE IT THAT THE RESPONDENT DID NOT VIOLATE THE PROVISIONS OF SECTION 10 OF THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT, 1965 AS ALLEGED BY THE APPLICANT. THE APPLICATION IS THEREFORE DISMISSED.
4. WE FEEL WE SHOULD REITERATE HERE THE CONCERN EXPRESSED BY THE BOARD AT THE HEARING WITH RESPECT TO THE APPLICANT'S USE OF SUBPOENAE WHICH RESULTED IN THE REMOVAL OF ALL BUT ONE OF THE TOTAL COMPLEMENT OF ENGINEERS AND MAINTENANCE PEOPLE FROM THEIR DUTIES AT THE HOSPITAL.
5. WHILE WE APPRECIATE THAT PARTIES ARE FULLY ENTITLED TO SUBPOENA SUCH WITNESSES AS THEY DEEM NECESSARY FOR THE PROPER PROSECUTION OF THEIR CASE, WE MUST NEVERTHELESS WARN PARTIES TO GUARD AGAINST EVEN WHAT MIGHT MERELY APPEAR TO BE AN ABUSE OF THE PROCESSES OF THE BOARD FOR MOTIVES NOT CONNECTED WITH THE ISSUE BEFORE THE BOARD.

18785-70-U: INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA, AFL-CIO-CLC (COMPLAINANT) V. SEVEN-UP (ONTARIO) LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: BRIAN DUNN, MARTIN LEVINSON, W. D. COOK AND T. PITOSCIA FOR THE COMPLAINANT, A. J. CLARK AND P. M. CAMPBELL FOR THE RESPONDENT.

DECISION OF J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBER J. D. BELL:
FEBRUARY 25, 1971.

1. THIS IS A COMPLAINT UNDER SECTION 65 OF THE LABOUR RELATIONS ACT WHEREIN IT IS ALLEGED THAT WILLIAM DOUGLAS COOK WAS DISCHARGED BY THE RESPONDENT ON DECEMBER 4, 1970 BECAUSE OF HIS SUPPORT FOR AND ACTIVITIES ON BEHALF OF THE COMPLAINANT, CONTRARY TO SECTION 50 OF THE ACT. THE RESPONDENT ALLEGED THAT IT DISCHARGED COOK BECAUSE HIS ATTITUDE WAS DETRIMENTAL TO THE COMPANY AND TO HIS FELLOW EMPLOYEES.

2. THE EVIDENCE ESTABLISHED THAT COOK HAD TESTIFIED ON BEHALF OF THE UNION IN AN EARLIER APPLICATION FOR CERTIFICATION AT A HEARING DURING THE SPRING OF 1970. IN THAT APPLICATION THE BOARD FOUND THAT A LETTER WRITTEN BY THE RESPONDENT CONTAINED PROMISES WHICH WOULD TEND TO UNDULY INFLUENCE THE EMPLOYEES AND A NEW REPRESENTATION VOTE WAS DIRECTED. THE APPLICATION WAS SUBSEQUENTLY FOLLOWING THE TAKING OF THE NEW REPRESENTATION VOTE. THE EVIDENCE FURTHER ESTABLISHED THAT A NEW CAMPAIGN TO ORGANIZE THE RESPONDENT'S EMPLOYEES WAS LAUNCHED BY THE UNION IN SEPTEMBER 1970 AND THE RESPONDENT ACKNOWLEDGED THAT IT WAS AWARE OF THE CAMPAIGN. COOK WAS ACTIVE ON BEHALF OF THE UNION IN BOTH CAMPAIGNS.

3. ON OCTOBER 1, 1970, THE RESPONDENT INAUGURATED A NEW METHOD OF SELLING ITS PRODUCTS. PRIOR TO THAT DATE THE RESPONDENT RELIED ON DRIVER SALESMEN TO SELL AND DELIVER THE PRODUCT AT THE TIME OF SALE. COMMENCING OCTOBER 1, THE RESPONDENT DIVIDED METROPOLITAN TORONTO INTO SEVEN ZONES AND APPOINTED AN ADVANCE SALESMAN FOR EACH ZONE. THE ADVANCE SALESMAN WAS REQUIRED TO SOLICIT ORDERS FOR THE RESPONDENT'S PRODUCT AND TO ASSIST THE DEALER IN MERCHANDISING THE PRODUCT BY FILLING SHELVES AND ROTATING STOCK. THE ADVANCE SALESMAN WAS ALSO REQUIRED TO ATTEMPT TO PLACE ADVERTISING DISPLAYS ON THE DEALER'S PREMISES, TO OBTAIN THE DEALER'S CO-OPERATION WHEN THE RESPONDENT RAN SPECIAL PROMOTIONS AND TO OBTAIN MORE DISPLAY AREA ON THE DEALER'S PREMISES.

4. AFTER THE ORDERS WERE OBTAINED BY THE ADVANCE SALESMAN THE PRODUCT WAS DELIVERED BY DELIVERY DRIVERS. THE DELIVERY MAN SHARED A RESPONSIBILITY WITH THE ADVANCE SALESMAN IN FILLING SHELVES AND ROTATING STOCK AND TO A LESSER DEGREE IN PLACING ADVERTISING AND DISPLAYS.

5. WHEN THE NEW SYSTEM WAS IMPLEMENTED, THE RESPONDENT PROMOTED

SEVEN OF THE TWENTY-EIGHT DRIVER SALESMEN TO THE POSITION OF ADVANCE SALESMAN. COOK WAS ONE OF THE SEVEN PROMOTED AND HE WAS GIVEN THE ZONE HE REQUESTED WHICH WAS APPARENTLY ONE OF THE BEST ZONES IN METROPOLITAN TORONTO. HOWEVER, FROM THE OUTSET, COOK WAS NOT IN FAVOUR OF THE NEW METHOD OF SELLING. AFTER ALMOST EIGHTEEN YEARS' SERVICE AS A DRIVER SALESMAN, HE APPARENTLY FOUND IT DIFFICULT TO ADJUST TO THE NEW SYSTEM AND OPENLY COMPLAINED ABOUT IT AND CRITICIZED WHAT HE CONSIDERED TO BE DEFECTS IN THE SYSTEM. AFTER THE SYSTEM HAD BEEN IN EFFECT FOR THREE WEEKS, THE RESPONDENT RAN A CONTEST BASED ON SALES VOLUME. COOK WAS ONE OF THE TWO WINNERS IN THIS CONTEST. HOWEVER, AFTER THE CONTEST THERE WAS A NOTICEABLE DROP IN COOK'S SALES. ALTHOUGH HIS ZONE HAD BEEN ONE OF THE BEST SALES AREA IN METROPOLITAN TORONTO, APART FROM THE WEEK OF THE CONTEST, THE SALES PERFORMANCE AFTER THE NEW SYSTEM HAD BEEN INSTITUTED DID NOT REFLECT THIS FACT.

6. IT WAS ABUNDANTLY CLEAR FROM THE EVIDENCE THAT COOK DID NOT ACCEPT THE NEW ADVANCE SALES SYSTEM AND DID NOT ATTEMPT TO GIVE HIS BEST EFFORT TO MAKE IT WORK. NOT ONLY DID THE SALES IN HIS ZONE SUFFER BUT AN INVESTIGATION OF HIS ZONE DISCLOSED MANY INSTANCES OF NEGLECT.

7. WHILE THE NEW SYSTEM WAS NOT WITHOUT DIFFICULTIES, IT RECEIVED THE ACTIVE SUPPORT OF THE OTHER ADVANCE SALESMEN AND IT IS NOW FUNCTIONING QUITE WELL. HOWEVER, AS LATE AS THE HEARING ON FEBRUARY 17, 1971, COOK WAS STILL HIGHLY CRITICAL OF THE SYSTEM AND CLEARLY DEMONSTRATED THAT HE HAD NOT ACCEPTED IT.

8. HAVING CONSIDERED ALL THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES, WE FIND THAT ALTHOUGH THE RESPONDENT WAS NOT ANXIOUS TO HAVE THE UNION REPRESENT ITS EMPLOYEES, THIS FACT HAD NOTHING TO DO WITH COOK'S DISCHARGE. THE RESPONDENT HAD BEEN AWARE OF COOK'S SUPPORT FOR THE UNION SINCE ABOUT MAY 1970 AND WAS AWARE OF THE NEW CAMPAIGN TO ORGANIZE THE EMPLOYEES THAT COMMENCED PRIOR TO THE INSTITUTION OF THE NEW ADVANCE SALES SYSTEM. ALTHOUGH SEIZED OF THIS KNOWLEDGE, THE RESPONDENT PROMOTED COOK WHEN THE NEW SYSTEM WAS INAUGURATED ON OCTOBER 1, 1970. WE ACCEPT THE EVIDENCE OF THE RESPONDENT THAT COOK WOULD NOT SUPPORT THE NEW SYSTEM AND JUST WENT THROUGH THE MOTIONS RATHER THAN PUTTING FORTH REAL EFFORT IN AN ATTEMPT TO MAKE IT WORK. AT THE HEARING COOK DEMONSTRATED HIS UNCO-OPERATIVE ATTITUDE WITH RESPECT TO THE NEW SYSTEM AND THEREBY CORROBORATED THE RESPONDENT'S EVIDENCE IN THIS REGARD.

9. IN THE HIGHLY SENSITIVE AREA OF CUSTOMER CONTACT IN SALES OR DELIVERY, POOR ATTITUDE CAN SERIOUSLY AFFECT THE EFFORTS OF AN EMPLOYEE. THE POLICY DIFFERENCE THAT AROSE BETWEEN COOK AND MANAGEMENT WAS SUCH THAT THE RESPONDENT WAS NOT ONLY ENTITLED BUT WAS OBLIGED TO TAKE ACTION TO CORRECT THE SITUATION. IN ATTEMPTING TO

ASCERTAIN THE TRUE REASONS FOR THE DISCHARGE, THE BOARD HAS CONSIDERED THE FACT THAT COOK WAS DISCHARGED AFTER APPROXIMATELY EIGHTEEN YEARS' SERVICE WITHOUT BEING OFFERED A JOB OF DELIVERY MAN OR ANY OTHER POSITION IN THE BARGAINING UNIT. HOWEVER, COOK'S ONLY EXPERIENCE WITH THE COMPANY INVOLVED CONTACT WITH THE CUSTOMER AND HIS ATTITUDE WOULD ADVERSELY AFFECT HIS PERFORMANCE AND THE INTEREST OF THE COMPANY IN ANY JOB THAT HE HAD EXPERIENCE.

10. WHILE THE BOARD IS CONCERNED WHEN SUCH A SENIOR EMPLOYEE IS DISCHARGED, IT IS NOT OUR FUNCTION TO SUBSTITUTE A REMEDY FOR DISCHARGE. IN COMPLAINTS UNDER SECTION 65 OF THE ACT, OUR PRIME FUNCTION IS TO DETERMINE WHETHER THE REAL REASON FOR THE DISCHARGE WAS CONTRARY TO THE PROVISIONS OF THE ACT. AS INDICATED ABOVE, WE ACCEPT THE RESPONDENT'S EXPLANATION OF THEIR REASONS FOR DISCHARGING COOK. WE ACCORDINGLY FIND THAT THE COMPLAINANT HAS FAILED TO ESTABLISH THAT THE RESPONDENT DISCHARGED COOK CONTRARY TO THE PROVISIONS OF THE ACT.

11. THE COMPLAINT IS THEREFORE DISMISSED.

DECISION OF BOARD MEMBER P. J. O'KEEFFE: FEBRUARY 25, 1971.

A SERIOUS CONFLICT OF EVIDENCE HAS ARISEN IN THIS CASE, THE MATTER OF CREDIBILITY IS A PRIME FACTOR IN MY DECISION TO FIND IN FAVOUR OF THE AGGRIEVED WILLIAM DOUGLAS COOK.

COOK WAS PROMOTED TO THE POSITION OF ADVANCE SALESMAN ON OCTOBER 1, 1970. AT THE TIME OF HIS PROMOTION HE HAD APPROXIMATELY 18 YEARS' SERVICE WITH THE RESPONDENT COMPANY. ALL OF THE EVIDENCE IN THIS CASE CLEARLY ESTABLISHES THAT COOK WAS A TOP DRIVER SALESMAN AND THAT HE WAS AN HONEST, RELIABLE AND CONSCIENTIOUS WORKER.

HIS INITIAL DIFFICULTIES AROSE IN THE NEW POSITION OF ADVANCE SALESMAN. IT IS CLEAR FROM COOK'S EVIDENCE THAT HE BELIEVED THAT THE NEW SALES SYSTEM WAS INFERIOR TO THE OLD SYSTEM AND HE EXPRESSED HIMSELF ACCORDINGLY.

COOK WAS AN ACTIVE SUPPORTER OF THE UNION. THE COMPANY IS ON RECORD IN BEING OPPOSED TO THE ORGANIZATION OF A UNION AMONG THEIR EMPLOYEES.

THE ABSOLUTELY INCREDIBLE EVIDENCE OF GORDON BURKE COUPLED WITH THE FAILURE OF THE RESPONDENT TO CALL KEEGAN, THE PRESIDENT OF THE RESPONDENT, TO MEET THE EVIDENCE OF COOK WITH REGARD TO KEEGAN'S ANTI-UNION UTTERANCES TOGETHER WITH THE APPARENT CALLOUS TREATMENT OF LONG SERVICE EMPLOYEE COOK, AS OPPOSED TO THE CONSIDERATE TREATMENT OF EMPLOYEE BROOKS WHO ADMITTEDLY DID NOT WORK OUT SUCCESSFULLY AS AN ADVANCE SALESMAN AND SO WAS DEMOTED TO DRIVER DELIVERYMAN, CAN

LEAD ME ONLY TO THE CONCLUSION THAT WILLIAM DOUGLAS COOK WAS DISCHARGED BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 50 OF THE ONTARIO LABOUR RELATIONS ACT. I WOULD HAVE ORDERED HIS REINSTATEMENT WITH FULL COMPENSATION FOR ALL LOSSES SUFFERED BY HIM BECAUSE OF SUCH ILLEGAL ACT OF THE RESPONDENT.

18647-70-M: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. AGILIS CORPORATION LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: BRIAN A. DUNN FOR THE APPLICANT, DONALD J. MCKILLOP, Q.C., FOR THE RESPONDENT.

DECISION OF THE BOARD: FEBRUARY 17, 1971.

1. THIS IS AN APPLICATION UNDER SECTION 79(2) OF THE LABOUR RELATIONS ACT WHEREIN THE APPLICANT SEEKS A DETERMINATION AS TO WHETHER EDWARD SPENCER, MIKE KOLPEAN, HENRY SCHLUETER AND RAY GUTHRIE ARE EMPLOYEES OF THE RESPONDENT FOR THE PURPOSES OF THE ACT.
2. IT APPEARS THAT THE APPLICANT WAS CERTIFIED AS BARGAINING AGENT FOR CERTAIN EMPLOYEES OF THE RESPONDENT IN MAY 1970. DURING THE COURSE OF BARGAINING FOR THE FIRST COLLECTIVE AGREEMENT THE RESPONDENT TOOK THE POSITION THAT THE FOUR PERSONS NAMED ABOVE WERE INDEPENDENT CONTRACTORS RATHER THAN EMPLOYEES.
3. ON NOVEMBER 16, 1970, THE BOARD APPOINTED AN EXAMINER TO INQUIRE INTO AND REPORT TO THE BOARD ON THE DUTIES AND RESPONSIBILITIES OF THE FOUR PERSONS. BY LETTER DATED NOVEMBER 24, 1970, THE EXAMINER CONFIRMED THE AGREEMENT OF THE PARTIES THAT HE WOULD CONVENE A MEETING OF THE PARTIES AT WINDSOR ON TUESDAY, DECEMBER 29, 1970 AND CONTINUING, IF NECESSARY, ON WEDNESDAY, DECEMBER 30, 1970.
4. IN ACCORDANCE WITH THE ARRANGEMENTS CONTAINED IN THE EXAMINER'S LETTER OF NOVEMBER 24, A MEETING OF THE PARTIES WAS CONVENED AT WINDSOR ON DECEMBER 29, 1970. THE FACTS SURROUNDING THE ISSUE NOW BEFORE THE BOARD ARE SET OUT IN AN INTERIM REPORT OF EXAMINER DATED JANUARY 15, 1971. THE RELEVANT PORTIONS OF THE INTERIM REPORT READ AS FOLLOWS:
 3. PRIOR TO THE EXAMINATION OF ANY WITNESSES, COUNSEL FOR THE APPLICANT MADE A REQUEST THAT THE EXAMINER ISSUE A SUBPOENA FOR AND EXAMINE MR. RALPH CARTER, THE GENERAL MANAGER OF THE RESPONDENT COMPANY, AND, TO THE BELIEF OF THE

UNION, AN OFFICER OF OTHER COMPANIES WHICH MIGHT WELL HAVE SOME CONNECTION WITH THE STATUS OF THE FOUR PERSONS TO BE EXAMINED.

4. THE EXAMINER ADVISED MR. DUNN THAT SUMMONSES WERE ISSUED BY THE BOARD, AND NOT BY THE EXAMINER. COUNSEL WAS FURTHER ADVISED THAT THE EXAMINER HAD NO AUTHORITY TO EXAMINE MR. CARTER SINCE THE BOARD'S DIRECTION CONFINED THE INQUIRY TO THE DUTIES AND RESPONSIBILITIES OF FOUR NAMED INDIVIDUALS. MR. DUNN WAS INFORMED THAT SHOULD HE ELECT TO CALL MR. CARTER, HE WOULD BE THE APPLICANT'S WITNESS. IT WAS SUGGESTED DURING DISCUSSION THAT THE EVIDENCE WHICH MIGHT BE OBTAINED FROM THOSE PERSONS WHO WERE TO BE EXAMINED COULD WELL MAKE IT UNNECESSARY FOR THE APPLICANT TO PURSUE THAT COURSE OF ACTION. MR. DUNN AGREED TO PROCEED ACCORDINGLY.
5. FOLLOWING THE EXAMINATION OF THREE OF THE FOUR PERSONS WHOM THE BOARD HAD DIRECTED ME TO EXAMINE, THE PARTIES AGREED THAT THE EVIDENCE OF ONE WAS REPRESENTATIVE OF AND APPLICABLE TO THE DUTIES AND RESPONSIBILITIES EXERCISED BY ALL, THEREBY MAKING IT UNNECESSARY TO EXAMINE THE FOURTH WITNESS.
6. COUNSEL FOR THE APPLICANT WAS ASKED IF HE WISHED TO INTRODUCE ANY EVIDENCE OR CALL ANY WITNESSES TO SUPPORT THE APPLICANT'S POSITION. THE APPLICANT DID NOT CALL ANY WITNESSES NOR DID THE APPLICANT ADDUCE ANY ADDITIONAL EVIDENCE. HOWEVER, COUNSEL FOR THE RESPONDENT HAVING ADVISED THAT HE WAS NOT PREPARED TO MAKE MR. RALPH CARTER, GENERAL MANAGER OF THE RESPONDENT COMPANY (WHO WAS PRESENT THROUGHOUT) AVAILABLE TO THE APPLICANT FOR PURPOSES OF CROSS-EXAMINATION, MR. DUNN, FOLLOWING A DISCUSSION, INDICATED THAT THE EVIDENCE ALREADY ADDUCED WOULD BE REVIEWED AND, IF IT WERE NECESSARY, A FORMAL APPLICATION FOR A SUMMONS FOR MR. CARTER WOULD BE MADE TO THE BOARD.
7. MR. STRINGER, FOR THE RESPONDENT, REQUESTED THAT HE BE GIVEN NOTICE OF ANY SUCH APPLICATION, SHOULD IT BE MADE, AND RESERVED HIS RIGHT TO REPLY THERETO, IT NOT BEING THE INTENTION OF THE RESPONDENT TO CALL ANY WITNESSES OR ADDUCE FURTHER EVIDENCE IN THE EVENT ANY SUCH REQUEST BY COUNSEL FOR THE APPLICANT WAS NOT GRANTED BY THE BOARD.

8. SINCE MY INQUIRY WAS COMPLETED, SUBJECT ONLY TO THE ISSUE WITH RESPECT TO MR. CARTER, THE MEETING WAS THEN ADJOURNED.

5. THE EXAMINER'S INQUIRY WAS CONCLUDED ON DECEMBER 29 AND THE PARTIES ACCORDINGLY DID NOT MEET ON DECEMBER 30. BY LETTER DATED JANUARY 4, 1971, COUNSEL FOR THE APPLICANT REQUESTED A SUMMONS FOR MR. CARTER AND IN ADDITION A SUMMONS FOR MR. R. T. BAILEY, THE CHIEF ENGINEER FOR THE CITY OF WINDSOR. COUNSEL FOR THE RESPONDENT HAS OPPOSED THE APPLICANT'S REQUEST FOR THE REASONS CONTAINED IN A LETTER DATED JANUARY 11, 1971.

6. A HEARING WAS DIRECTED BY THE BOARD TO HEAR THE REPRESENTATIONS OF THE APPLICANT WITH RESPECT TO ITS REQUEST THAT SUBPOENAS BE ISSUED FOR MR. CARTER AND MR. BAILEY. AT THE HEARING, COUNSEL FOR THE APPLICANT TOOK THE POSITION THAT IT WAS ONLY AFTER HEARING THE EVIDENCE OF OTHER WITNESSES WHO WERE EXAMINED THAT THE APPLICANT WAS ABLE TO IDENTIFY THE DOCUMENTS IT WISHED MR. CARTER TO PRODUCE AND ACCORDINGLY THE APPLICANT WAS UNABLE TO CAUSE MR. CARTER TO BE SERVED WITH A SUBPOENA DUCES TECUM UNTIL SUCH DOCUMENTS WERE IDENTIFIED.

7. PRACTICE NOTE #4 AS CONTAINED IN THE PAMPHLET COPY OF THE BOARD'S RULES OF PROCEDURE AND TO WHICH THE ATTENTION OF THE PARTIES WAS DIRECTED BY THE REGISTRAR READS, IN PART, AS FOLLOWS:

5. AFTER THE EXAMINER HAS ASKED A WITNESS WHATEVER QUESTIONS HE DEEMS NECESSARY CONCERNING THE DUTIES AND RESPONSIBILITIES OF THE PERSONS OR CLASSIFICATIONS IN QUESTION, EACH PARTY WILL BE GIVEN FULL OPPORTUNITY TO ASK ANY FURTHER QUESTIONS AND CALL ANY ADDITIONAL WITNESSES TO GIVE EVIDENCE IN SUPPORT OF ITS POSITION.

6. ALL THE EVIDENCE CONCERNING THE MATTERS WHICH HE IS AUTHORIZED TO INQUIRE INTO MUST BE PLACED BEFORE THE EXAMINER

8. IT IS NOTED THAT THE APPLICANT REQUESTED A SUBPOENA FOR MR. CARTER AT THE OUTSET OF THE EXAMINER'S INQUIRY, PRIOR TO HEARING ANY EVIDENCE ADDUCED BY OTHER WITNESSES. THE EXAMINER ADVISED THE APPLICANT THAT HE HAD NO AUTHORITY TO ISSUE A SUBPOENA AND THE EXAMINER REFUSED TO CALL MR. CARTER (WHO WAS PRESENT THROUGHOUT THE EXAMINER'S INQUIRY) AS A BOARD WITNESS. THE EXAMINER INFORMED THE APPLICANT, HOWEVER, THAT SHOULD THE APPLICANT ELECT TO CALL MR. CARTER, MR. CARTER WOULD BE THE APPLICANT'S WITNESS. APPARENTLY THE APPLICANT WAS NOT PREPARED TO CALL MR. CARTER AS THE APPLICANT'S WITNESS SINCE MR. CARTER WAS ADVERSE IN INTEREST TO THE APPLICANT. THE APPLICANT THEN ASKED THE RESPONDENT TO MAKE MR. CARTER AVAILABLE TO THE APPLICANT

FOR CROSS-EXAMINATION. THIS THE RESPONDENT WAS NOT PREPARED TO DO.

9. IT IS ABUNDANTLY CLEAR FROM THE FOREGOING THAT FROM THE OUTSET OF THE EXAMINER'S INQUIRY THE APPLICANT CONSIDERED MR. CARTER'S EVIDENCE TO BE IMPORTANT TO THE APPLICANT'S CASE. SINCE MR. CARTER WAS PRESENT THROUGHOUT THE EXAMINER'S MEETING, THE APPLICANT COULD HAVE REQUESTED THAT MR. CARTER COME FORWARD TO TESTIFY AS THE APPLICANT'S WITNESS, EVEN THOUGH HE WAS NOT SERVED WITH A SUMMONS. THE PURPOSE OF A SUMMONS TO WITNESS (FORM 48) IS TO COMPEL THE ATTENDANCE OF A WITNESS AT A HEARING. SINCE MR. CARTER WAS IN ATTENDANCE AT THE EXAMINER'S HEARING THERE WAS NO NECESSITY TO SERVE HIM WITH A SUMMONS. AGAIN, IF MR. CARTER HAD CUSTODY OF DOCUMENTS RELEVANT TO THE BOARD'S INQUIRY, IT WOULD HAVE BEEN A SIMPLE MATTER FOR HIM TO OBTAIN SUCH DOCUMENTS SINCE THE EXAMINER'S INQUIRY COULD HAVE BEEN RECESSED FOR THAT PURPOSE. IF THE APPLICANT HAD CALLED MR. CARTER AND REQUESTED HIM TO PRODUCE DOCUMENTS IN HIS CUSTODY AND IF MR. CARTER HAD REFUSED TO TESTIFY AND PRODUCE SUCH DOCUMENTS, DIFFERENT CONSIDERATIONS MIGHT APPLY. AT THE EXAMINER'S HEARING, HOWEVER, THE APPLICANT WANTED EITHER THE EXAMINER OR THE RESPONDENT TO CALL MR. CARTER IN ORDER THAT THE APPLICANT COULD CROSS-EXAMINE HIM. THE APPLICANT WAS NOT PREPARED TO CALL MR. CARTER AS THE APPLICANT'S WITNESS. WHILE IT IS UNDERSTANDABLE WHY THE APPLICANT WOULD WISH TO CROSS-EXAMINE MR. CARTER RATHER THAN EXAMINE HIM AS AN APPLICANT'S WITNESS, THERE IS NOTHING IN THE ACT OR THE BOARD'S RULES OF PROCEDURE WHICH ENTITLES THE APPLICANT TO INSIST UPON SUCH AN ADVANTAGEOUS PROCEDURE.

10. IN ARGUMENT, THE APPLICANT POINTED OUT THAT THE BOARD WOULD NOT ISSUE A SUBPOENA DUCES TECUM UNLESS THE DOCUMENTS TO BE PRODUCED WERE IDENTIFIED. THE APPLICANT THEREFORE ARGUED THAT IT COULD NOT IDENTIFY THE DOCUMENTS THE APPLICANT WISHED MR. CARTER TO PRODUCE UNTIL THESE DOCUMENTS WERE REFERRED TO BY OTHER WITNESSES AT THE HEARING. WHILE THE BOARD WILL NOT ISSUE A SUMMONS WHICH COMPELS A WITNESS TO PRODUCE ALL BOOKS AND DOCUMENTS WITHOUT LIMITATION, THE CONCERN EXPRESSED BY THE APPLICANT IN THIS CASE IS WITHOUT FOUNDATION. A SUMMONS DUCES TECUM IS SUFFICIENTLY LIMITED IN SCOPE IF THE WITNESS IS REQUIRED BY THE SUMMONS ". . . TO GIVE EVIDENCE ON OATH TOUCHING THE MATTERS IN QUESTION IN THE PROCEEDING, AND TO BRING WITH YOU AND PRODUCE AT THAT TIME AND PLACE ALL BOOKS, RECORDS AND DOCUMENTS PERTAINING TO THE RELATIONSHIP OF THE RESPONDENT WITH EDWARD SPENCER, MIKE KOLPEAN, HENRY SCHLUETER OR RAY GUTHRIE." SUCH A SUMMONS WOULD NOT REQUIRE THE WITNESS TO PRODUCE OTHER BOOKS, RECORDS AND DOCUMENTS THAT HAVE NO RELEVANCE TO THE SUBJECT-MATTER OF THE INQUIRY BUT WOULD REQUIRE THE PRODUCTION OF ALL RELEVANT MATERIAL.

11. IT IS INCUMBENT UPON A PARTY TO PROPERLY PREPARE ITSELF FOR ANY HEARING DIRECTED BY THE BOARD. IF A PARTY WISHES TO COMPEL THE ATTENDANCE OF A WITNESS OR TO COMPEL THE PRODUCTION OF DOCUMENTS, IT

IS NECESSARY TO MAKE ARRANGEMENTS FOR SUCH WITNESSES AND DOCUMENTS PRIOR TO THE HEARING AND OBTAIN AND SERVE ALL SUMMONS THAT MAY BE REQUIRED FAR ENOUGH IN ADVANCE OF THE HEARING TO PERMIT THE WITNESSES TO ATTEND. A PARTY CANNOT EVADE THE RESPONSIBILITY TO PREPARE ITSELF IN ADVANCE OF A HEARING BY RESERVING THE RIGHT TO CALL ADDITIONAL EVIDENCE AS THE APPLICANT HAS ATTEMPTED TO DO IN THIS CASE. THE PARTIES HAD AMPLE NOTICE OF THE EXAMINER'S HEARING AND TWO CONSECUTIVE DAYS WERE RESERVED FOR THIS PURPOSE. ONLY ONE OF THE TWO DAYS WAS USED FOR THE PURPOSE OF THE EXAMINER'S INQUIRY. THE PARTIES WERE GIVEN THE OPPORTUNITY TO ADDUCE ANY ADDITIONAL EVIDENCE THROUGH OTHER WITNESSES BUT DID NOT AVAIL THEMSELVES OF THIS OPPORTUNITY. IN THESE CIRCUMSTANCES, THE BOARD IS OF OPINION THAT NO FURTHER OPPORTUNITY SHOULD NOW BE GIVEN TO CALL MORE WITNESSES OR TO ADDUCE ADDITIONAL EVIDENCE.

12. THE BOARD THEREFORE DENIES THE APPLICANT'S REQUEST FOR A SUMMONS DUCES TECUM FOR MR. CARTER AND MR. BAILEY.

13. THE BOARD THEREFORE DIRECTS THE EXAMINER TO REPORT TO THE BOARD ON THE EVIDENCE ADDUCED AT THE HEARING HELD ON DECEMBER 29, 1970, IN ACCORDANCE WITH THE BOARD'S DIRECTION OF NOVEMBER 16, 1970 IN THIS MATTER.

17608-70-M: LOCAL 556, THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (APPLICANT) v. THE REGIONAL MUNICIPALITY OF NIAGARA, THE BOARD OF WATER COMMISSIONERS OF THE CITY OF WELLAND, UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) AND CANADIAN UNION OF PUBLIC EMPLOYEES (RESPONDENTS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

DECISION OF THE BOARD: FEBRUARY 9, 1971.

1. IN THE COURSE OF ITS ARGUMENT TO THE BOARD IN THIS MATTER THE APPLICANT SUBMITTED THAT CERTAIN OF THE EMPLOYEES CONCERNED WERE REPRESENTED BY LOCALS OF CANADIAN UNION OF PUBLIC EMPLOYEES, HEREINAFTER REFERRED TO AS "CUPE". THE APPLICANT HAD PREVIOUSLY MADE REFERENCE TO LOCALS OF CUPE IN ITS LETTER OF APPLICATION OF APRIL 8, 1970. IN A FURTHER LETTER DATED APRIL 27, 1970, HOWEVER, THE APPLICANT NOTIFIED THE BOARD THAT, ACCORDING TO THE DIRECTOR OF PERSONNEL OF THE REGIONAL MUNICIPALITY, THE OTHER UNIONS INTERESTED IN THE APPLICATION WERE CANADIAN UNION OF PUBLIC EMPLOYEES AND THE UEW.

2. IN ITS REPLY, CUPE STATED THAT IT REPRESENTED APPROXIMATELY 125 EMPLOYEES UNDER COLLECTIVE AGREEMENTS WITH PREDECESSORS TO THE RESPONDENT AT A NUMBER OF NAMED MUNICIPALITIES. IT MADE NO MENTION OF LOCAL UNIONS.

3. IN THE REPLY FILED BY THE REGIONAL MUNICIPALITY, REFERENCE IS MADE TO AN AGREEMENT TO RECOGNIZE CUPE AS BARGAINING AGENT FOR CERTAIN EMPLOYEES, BUT THERE IS NO INDICATION OF THE EXISTENCE OF BARGAINING RIGHTS OTHER THAN THOSE HELD BY THE APPLICANT.

4. HOWEVER, AN EXAMINATION OF THE COLLECTIVE AGREEMENTS FILED WITH THE BOARD BY CUPE DURING THE PROCEEDINGS INDICATE THAT THEY ARE ALL AGREEMENTS BETWEEN LOCALS OF CUPE AND VARIOUS MUNICIPALITIES IN THE REGIONAL MUNICIPALITY. CUPE ITSELF IS NOT A PARTY TO ANY OF THE AGREEMENTS PRESENTED TO THE BOARD.

5. IT WOULD APPEAR THAT AT THE TIME OF THE FORMATION OF THE REGIONAL MUNICIPALITY AND AT THE TIME OF THE PRESENT APPLICATION, THE FOLLOWING LOCALS OF CUPE HELD BARGAINING RIGHTS FOR EMPLOYEES OF THE MUNICIPALITIES WHICH HAVE BEEN SET OUT OPPOSITE TO THE LOCALS BELOW:

<u>MUNICIPALITY</u>	<u>LOCAL</u>
GRIMSBY	1007
FORT ERIE	714
NIAGARA FALLS	133
PORT COLBORNE	155
ST. CATHARINES BOARD OF WORKS	150
ST. CATHARINES CITY HALL	157
WELLAND	1115
CRYSTAL BEACH	714

6. THERE HAS BEEN NO SUGGESTION AND CERTAINLY NO EVIDENCE OF ABANDONMENT OF BARGAINING RIGHTS BY ANY OF THE ABOVE LOCALS, NOR OF THE ASSIGNMENT OF ANY OF THEIR RIGHTS. IN THE CIRCUMSTANCES, EACH LOCAL WAS ENTITLED TO NOTIFICATION OF THESE PROCEEDINGS WHICH SO OBVIOUSLY AFFECT THE RESPECTIVE BARGAINING RIGHTS AND IS ENTITLED TO MAKE SUCH REPRESENTATIONS AS EACH MAY DESIRE. IT MIGHT BE ADDED THAT, PRIMA FACIE, EACH LOCAL UNION WHICH REPRESENTED EMPLOYEES IN A BARGAINING UNIT, SIMILAR TO THOSE UNDER CONSIDERATION, WOULD BE ENTITLED TO APPEAR ON THE BALLOT SHOULD THE BOARD DECIDE TO ORDER A REPRESENTATION VOTE.

7. THE REGISTRAR IS ACCORDINGLY DIRECTED TO NOTIFY THE LOCAL UNIONS LISTED ABOVE CONCERNING THIS APPLICATION AND TO SUPPLY EACH WITH A COPY OF THE MATERIALS FILED AND OF THE DECISION OF THE BOARD TO THE DATE HERETO. ANY PERSON OR UNION DESIRING TO MAKE REPRESENTATIONS OR A REQUEST FOR A HEARING MUST SUBMIT SUCH REPRESENTATIONS OR REQUEST FOR A HEARING ON OR BEFORE FEBRUARY 17, 1971, FAILING WHICH THE BOARD WILL DISPOSE OF THE MATTER ON THE EVIDENCE THEN BEFORE IT WITHOUT FURTHER NOTICE.

8. THERE ALSO AROSE IN THE COURSE OF THESE PROCEEDINGS THE QUESTION AS TO WHETHER THE EMPLOYEES OF THE REGIONAL MUNICIPALITY OF NIAGARA EMPLOYED IN THE PROJECTS AND THE ROADWAYS SECTIONS, OUGHT TO BE INCLUDED IN ANY BARGAINING UNIT THAT THE BOARD MIGHT FIND TO BE APPROPRIATE. BECAUSE OF THE FORM IN WHICH THE ORIGINAL APPLICATION WAS MADE, THE NOTICE OF HEARING WHICH THE BOARD DIRECTED TO BE POSTED WAS ADDRESSED TO ALL THE EMPLOYEES OF THE REGIONAL MUNICIPALITY THE APPLICATION DOES NOT MAKE IT CLEAR THAT EMPLOYEES OTHER THAN THOSE OF THE WATER SUPPLY AND POLLUTION CONTROL SECTIONS MIGHT BE AFFECTED.

9. THE REGISTRAR IS THEREFORE DIRECTED TO CAUSE NOTICE OF THIS APPLICATION TO BE POSTED DIRECTED TO ALL EMPLOYEES OF THE REGIONAL MUNICIPALITY OF NIAGARA EMPLOYED IN THE WATER SUPPLY, THE POLLUTION CONTROL, THE PROJECTS AND THE ROADWAYS DEPARTMENTS. ANY PERSON OR UNION DESIRING TO MAKE REPRESENTATIONS OR REQUESTING A HEARING IN THIS ASPECT OF THE CASE MUST SUBMIT SUCH REPRESENTATIONS OR REQUEST FOR A HEARING ON OR BEFORE FEBRUARY 17, 1971, FAILING WHICH THE BOARD WILL DISPOSE OF THE MATTER ON THE EVIDENCE THEN BEFORE IT WITHOUT FURTHER NOTICE.

10. THE PARTIES ARE HEREBY DIRECTED TO FORTHWITH DISCLOSE TO THE BOARD THE NAME AND ADDRESS OF ANY ADDITIONAL TRADE UNION KNOWN TO THEM AS CLAIMING TO BE BARGAINING AGENT OR TO REPRESENT ANY EMPLOYEES WHO MAY BE AFFECTED BY THESE PROCEEDINGS.

11. THE MATTER IS REFERRED TO THE REGISTRAR.

18622-70-M: BARLOCK LIMITED, FORMERLY KIDD COPPER MINES LIMITED (EMPLOYER) V. UNITED STEELWORKERS OF AMERICA (TRADE UNION) V. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (TRADE UNION).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: NO ONE FOR THE EMPLOYER; IAN SCOTT, S. T. GOUDGE AND JAMES KEUHL FOR UNITED STEELWORKERS OF AMERICA; RAYMOND KOSKIE, HUGH MACDONALD AND MICHAEL REILLY FOR LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183.

DECISION OF THE BOARD: FEBRUARY 23, 1971.

1. THE MINISTER REFERRED TO THE BOARD PURSUANT TO SECTION 79A OF THE ACT THE QUESTION AS TO WHETHER HE HAD THE AUTHORITY TO APPOINT A CONCILIATION OFFICER IN THIS MATTER.

2. AT THE FIRST HEARING ON DECEMBER 8, 1970, THE UNITED STEEL-

WORKERS OF AMERICA (HEREINAFTER REFERRED TO AS STEEL) CHALLENGED THE JURISDICTION OF THE BOARD TO DEAL WITH THE REFERENCE IN VIEW OF THE FACT THAT THE MINISTER HAD ALREADY APPOINTED A CONCILIATION OFFICER ON SEPTEMBER 14, 1970. FOR THE REASONS SET FORTH IN A DECISION DATED DECEMBER 9, 1970, THE BOARD FOUND THAT IT DID HAVE JURISDICTION AND DIRECTED THE REGISTRAR TO LIST THE CASE FOR CONTINUATION OF HEARING FOR THE PURPOSE OF DEALING WITH THE REFERENCE ON ITS MERITS.

3. AT THE SECOND HEARING ON FEBRUARY 1, 1971, STEEL CALLED TWO WITNESSES. ONE WAS JAMES KEUHL, A STAFF REPRESENTATIVE OF STEEL EMPLOYED IN THE SUDBURY DISTRICT. THE OTHER WAS ANTHONY KANA, FORMERLY AN EMPLOYEE OF ONE J. P. SHERIDAN, A PERSON WHO WILL BE REFERRED TO LATER IN THIS DECISION. THE RELEVANT ORAL AND DOCUMENTARY EVIDENCE ADDUCED AT THE HEARING IS OUTLINED BELOW.

4. ON MAY 16, 1966, THE BOARD ISSUED A CERTIFICATE TO THE INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS (CANADA) (HEREINAFTER REFERRED TO AS MINE, MILL) FOR ALL EMPLOYEES OF KIDD COPPER MINES LIMITED (HEREINAFTER REFERRED TO AS KIDD COPPER) ENGAGED IN THE DEVELOPMENT STAGE OF ITS MINING OPERATION IN THE TOWNSHIP OF DENSION. THE PARTIES ENTERED INTO A COLLECTIVE AGREEMENT DATED OCTOBER 23, 1966, THE SCOPE CLAUSE OF WHICH COVERS ALL EMPLOYEES OF KIDD COPPER EMPLOYED AT ITS MINE IN THE TOWNSHIP OF DENSION IN THE DISTRICT OF SUDBURY, WITH CERTAIN EXCEPTIONS WHICH ARE NOT MATERIAL FOR PURPOSES OF THIS DECISION. THE TERMINATION CLAUSE PROVIDES THAT THE AGREEMENT IS TO REMAIN IN EFFECT FOR A PERIOD OF TWO YEARS. THE CLAUSE, HOWEVER, PROVIDES THAT IF THERE ARE CLEAR INDICATIONS THAT THE MINE WILL BE CLOSED FOR LACK OF ORE WITHIN ONE YEAR OF THE SECOND ANNIVERSARY, THE AGREEMENT SHALL CONTINUE FOR THAT PERIOD WITH AN ADDITIONAL WAGE INCREASE OF FIVE PER CENT.

5. KEUHL TESTIFIED THAT AT THE TIME THE PARTIES ENTERED INTO THE COLLECTIVE AGREEMENT KIDD COPPER WAS COMPLETING THE DEVELOPMENT STAGE OF ITS MINE IN THE TOWNSHIP OF DENSION. HIS EVIDENCE IS THAT AT THE SAME TIME THE COMPANY WAS DEVELOPING THE MINE IT WAS ALSO BUILDING A MILL IN DENSION TOWNSHIP. KEUHL'S TESTIMONY IS THAT AT THE TIME THE COLLECTIVE AGREEMENT WAS ENTERED INTO IN OCTOBER OF 1966, KIDD COPPER WAS ABOUT TO OR JUST HAD COMMENCED ITS PRODUCTION OPERATIONS IN THE MILL. KEUHL TESTIFIED THAT WHILE THE MILL EMPLOYEES WERE NOT SPECIFICALLY REFERRED TO IN THE SCOPE OR RECOGNITION CLAUSE OF THE AGREEMENT, WAGE CLASSIFICATIONS WERE ESTABLISHED IN THE AGREEMENT FOR THE MILL EMPLOYEES. ACCORDING TO KEUHL THE PARTIES HAVE TREATED THE MILL EMPLOYEES AS BEING IN THE UNIT IN THE ADMINISTRATION OF THE AGREEMENT AND HAVE FILED GRIEVANCES ON THEIR BEHALF. KEUHL WAS UNCERTAIN AS TO WHETHER THERE WERE ANY PRODUCTION EMPLOYEES EMPLOYED IN THE MILL ON OCTOBER 23, 1966 WHEN THE AGREEMENT WAS EXECUTED.

6. BY A DECISION OF THE BOARD DATED APRIL 17, 1968, THE BOARD DECLARED THAT STEEL HAD ACQUIRED THE BARGAINING RIGHTS OF MINE, MILL FOR THE EMPLOYEES OF KIDD COPPER DEFINED IN THE COLLECTIVE AGREEMENT DATED OCTOBER 23, 1966. KEUHL'S EVIDENCE IS THAT THE MINE AND MILL IN DENSION TOWNSHIP WERE CLOSED DOWN IN DECEMBER OF 1968 AND THAT THE MILL WAS REOPENED IN THE LATE SPRING OF 1969, THE MINE REMAINED PERMANENTLY CLOSED. THE EVIDENCE IS THAT IN THE SPRING OF 1968 A COMPANY BY THE NAME OF SPANISH RIVER MINE LIMITED CONTRACTED WITH ANOTHER COMPANY BARLOCK LIMITED (HEREINAFTER REFERRED TO AS BARLOCK) TO DO THE DEVELOPMENT WORK ON A MINE IN BALDWIN AND PORTER TOWNSHIPS AND ADVANCED TO BARLOCK APPROXIMATELY HALF A MILLION DOLLORS FOR THAT PURPOSE. IT WAS THE ORE EXTRACTED DURING THE DEVELOPMENT STAGE OF THE MINE THAT ENABLED THE MILL IN DENSION TOWNSHIP TO REOPEN. BARLOCK CONTINUED TO DO THE DEVELOPMENT WORK AT THE SPANISH RIVER MINE UNTIL MARCH OF 1969.

7. BY A DECISION DATED FEBRUARY 25, 1969, THIS BOARD CERTIFIED THE LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 183 (ROCK AND TUNNEL WORKERS DIVISIONS) (HEREINAFTER REFERRED TO AS THE LABOURERS) FOR A UNIT COMPOSED OF ALL EMPLOYEES OF BARLOCK IN THE TOWNSHIP OF BALDWIN, SAVE AND EXCEPT THE RESIDENT SUPERINTENDENT. KANA TESTIFIED THAT TWO BARGAINING SESSIONS TOOK PLACE BETWEEN HIMSELF AND THE LABOURERS IN MARCH OF 1969 FOR A COLLECTIVE AGREEMENT COVERING THE EMPLOYEES OF BARLOCK AT THE SPANISH RIVER MINE. NO AGREEMENT, HOWEVER, AT THAT TIME OR SUBSEQUENTLY WAS EVER ENTERED INTO BY THE PARTIES.

8. KANA TESTIFIED THAT IN MARCH OF 1969 SPANISH RIVER MINE LIMITED ENTERED INTO AN AGREEMENT WITH KIDD COPPER WHEREBY KIDD COPPER TOOK OVER THE REMAINING DEVELOPMENT OF THE SPANISH RIVER, MINE FROM BARLOCK. BY THE AGREEMENT, IN ESSENCE, THE TWO COMPANIES ENTERED INTO A JOINT VENTURE, KIDD COPPER AND SPANISH RIVER MINE LIMITED SHARING EQUALLY IN ANY PROFITS (OR LOSSES) DERIVED FROM THE SALE OF THE COPPER CONCENTRATE EXTRACTED FROM THE MINE AND REFINED AT THE MILL IN DENSION TOWNSHIP. KIDD COPPER BROUGHT THE MINE INTO FULL PRODUCTION BY JUNE OF 1969 AND CONTINUED TO OPERATE IT FOR THE FOLLOWING YEAR.

9. IN MARCH OF 1969, APPARENTLY AT ABOUT THE TIME THAT IT TOOK OVER OPERATIONS AT THE SPANISH RIVER MINE, KIDD COPPER AND LOCAL 7282 OF STEEL ENTERED INTO AN AGREEMENT DATED MARCH 10, 1969. THE AGREEMENT WAS SIGNED BY SHERIDAN ON BEHALF OF KIDD COPPER AND BY KEUHL AND THE PRESIDENT OF LOCAL 7282 ON BEHALF OF THE UNION. BY THIS AGREEMENT, KIDD COPPER RECOGNIZED LOCAL 7282 OF STEEL AS THE BARGAINING AGENT FOR THE EMPLOYEES OF KIDD COPPER AT ITS SPANISH RIVER MINE IN THE TOWNSHIPS OF PORTER AND BALDWIN IN THE DISTRICT OF SUDBURY. KIDD COPPER AND LOCAL 7282 AGREED THAT THE COLLECTIVE AGREEMENT "BETWEEN THE PARTIES" DATED OCTOBER 23, 1966, FOR THE EMPLOYEES OF THE COMPANY AT ITS MINE IN THE TOWNSHIP OF DENSION APPLIED TO THE COMPANY'S EMPLOYEES AT THE

SPANISH RIVER MINE "FOR THE TERM SPECIFIED" IN THE COLLECTIVE AGREEMENT.

10. KEUHL IDENTIFIED A COLLECTIVE AGREEMENT DATED DECEMBER 8, 1969 BETWEEN KIDD COPPER AND STEEL. THE DURATION CLAUSE PROVIDES THAT THE AGREEMENT IS TO REMAIN IN EFFECT FROM OCTOBER 23, 1969 TO OCTOBER 22, 1972. THE SCOPE CLAUSE OF THE AGREEMENT IS IN THE SAME LANGUAGE AS THAT APPEARING IN THE OCTOBER 23, 1966 COLLECTIVE AGREEMENT BETWEEN KIDD COPPER AND MINE, MILL, EXCEPT THAT IT INCLUDES NOT ONLY THE EMPLOYEES OF THE COMPANY AT ITS MINE IN THE TOWNSHIP OF DENISON BUT ALSO THE COMPANY'S EMPLOYEES AT ITS SPANISH RIVER MINE IN THE TOWNSHIPS OF PORTER AND BALDWIN, ALL OF THE SAID TOWNSHIPS BEING IN THE DISTRICT OF SUDBURY. AS IN THE EARLIER AGREEMENT, THE DECEMBER 8, 1969 AGREEMENT MAKES NO REFERENCE TO THE EMPLOYEES OF KIDD COPPER WORKING IN ITS MILL IN DENISON TOWNSHIP. AGAIN, AS IN THE CASE OF THE EARLIER AGREEMENT, THERE IS AN ATTACHED SCHEDULE WHICH CONTAINS JOB CLASSIFICATIONS AND WAGE RATES FOR MILL EMPLOYEES. KEUHL TESTIFIED THAT THE MILL EMPLOYEES CONTINUED TO BE REPRESENTED BY STEEL UNDER THE DECEMBER 8, 1969 AGREEMENT AS THEY HAD UNDER THE PRIOR AGREEMENT. WE WOULD MENTION THAT BOTH THE OCTOBER 23, 1966 AGREEMENT AND THE DECEMBER 8, 1969 AGREEMENT PROVIDE FOR COMPULSORY CHECK-OFF OF UNION DUES BUT NEITHER AGREEMENT REQUIRED EMPLOYEES TO JOIN THE UNION. KEUHL WAS UNABLE TO SAY WHETHER OR NOT AT THE TIME THE DECEMBER 8, 1969 AGREEMENT WAS ENTERED INTO STEEL REPRESENTED A MAJORITY OF THE EMPLOYEES OF KIDD COPPER WORKING AT THE SPANISH RIVER MINE. KANA TESTIFIED THAT THE UNION OFFERED NO EVIDENCE TO ESTABLISH THIS FACT NOR DID THE COMPANY MAKE ANY INQUIRES.

11. KANA GAVE THE TESTIMONY SET OUT BELOW CONCERNING THE INTER-RELATIONSHIP OF KIDD COPPER, BARLOCK AND SPANISH RIVER MINE LIMITED, AS HE UNDERSTOOD IT. UNTIL JUNE OF 1970, BARLOCK WAS STRICTLY A MINING DEVELOPMENT COMPANY AND ITS ONLY ASSETS WERE TWO FRONT-END LOADERS. IN DOING THE DEVELOPMENT WORK AT THE SPANISH RIVER MINE UNDER CONTRACT FROM SPANISH RIVER MINE LIMITED DURING THE YEAR PERIOD FROM THE SPRING OF 1968 TO THE SPRING OF 1969, BARLOCK USED THE BUILDINGS, GENERATORS AND DRILLS ON THE SITE WHICH WERE THE PROPERTY OF THE JOINT VENTURE. DURING THIS PERIOD, BARLOCK SPENT NOT ONLY THE NEARLY HALF MILLION DOLLARS ADVANCED BY SPANISH RIVER MINE LIMITED BUT ALSO APPROXIMATELY A HUNDRED AND FIFTY THOUSAND DOLLARS OF ITS OWN MONIES. THIS AMOUNT, HOWEVER, WAS A DEBT OWING BY THE JOINT VENTURE (I.E. KIDD COPPER AND SPANISH RIVER MINE LIMITED) TO BARLOCK, TO BE PAID, HOPEFULLY, OUT OF THE PROFITS DERIVED FROM THE SALE OF COPPER EXTRACTED FROM THE MINE AND PROCESSED AT THE MILL IN DENISON TOWNSHIP. BARLOCK DID NOT HAVE ANY SHARE IN THE BUSINESS OF THE MINE. RATHER, BARLOCK WAS PAID A FEE BASED ON A FIXED PERCENTAGE OF THE DEVELOPMENT COSTS FOR ITS SERVICES.

12. KANA WENT ON TO GIVE THE FOLLOWING EVIDENCE. A DECISION

WAS MADE EARLY IN 1970, PRESUMABLY BY J. P. SHERIDAN, THAT FURTHER DEVELOPMENT WORK WOULD BE DONE ON THE SPANISH RIVER MINE. TOWARDS THIS END, THE PRODUCTION OPERATIONS AT THE MINE BEING PERFORMED BY KIDD COPPER WERE TEMPORARILY PHASED OUT IN MARCH OF 1970. AT THE SAME TIME, BARLOCK STARTED TO DO THE FURTHER DEVELOPMENT WORK ON THE MINE. IN JUNE OF 1970, PRODUCTION OPERATIONS AT THE MINE RE-COMMENCED WITH BARLOCK RATHER THAN KIDD COPPER IN CHARGE OF THIS PHASE AS WELL AS THE DEVELOPMENT PHASE OF THE MINING OPERATIONS. WHEN BARLOCK TOOK OVER THE PRODUCTION OPERATIONS OF THE MINE FORMERLY CARRIED ON BY KIDD COPPER, THERE WAS NO TRANSFER OR DISPOSITION OF ANY ASSETS FROM KIDD COPPER TO BARLOCK. SOME PERSONS WHO HAD BEEN EMPLOYEES OF KIDD COPPER WORKING AT THE MINE WERE HIRED BY BARLOCK WHEN IT RE-COMMENCED PRODUCTION OPERATIONS. THE JOINT VENTURE, HOWEVER, CONTINUED TO OWN ALL OF THE PHYSICAL ASSETS OF THE MINE, EXCEPT THE TWO FRONT-END LOADERS OWNED BY BARLOCK.

13. THE TESTIMONY OF KEUHL SEEMS TO SUGGEST THAT WHEN BARLOCK REOPENED THE SPANISH RIVER MINE IN JUNE OF 1970, STEEL ASSUMED THAT BARLOCK WAS BOUND BY THE AGREEMENT OF DECEMBER 8, 1969 BETWEEN STEEL AND KIDD COPPER. THIS ASSUMPTION IS STRENGTHENED BY KEUHL'S EVIDENCE THAT LOCAL 7282 FILED A POLICY GRIEVANCE ALLEGING THAT BARLOCK WAS NOT HIRING EMPLOYEES IN COMPLIANCE WITH THE RECALL SENIORITY PROVISIONS OF THE AGREEMENT. BARLOCK IGNORED THE GRIEVANCE AND IT WOULD SEEM THE AGREEMENT ALSO. IT APPEARS FROM THE EVIDENCE OF KEUHL THAT STEEL THEN ADOPTED THE POSITION THAT THERE HAD BEEN A SALE OF KIDD COPPER'S BUSINESS AT THE SPANISH RIVER MINE TO BARLOCK WITHIN THE MEANING OF SECTION 47A OF THE LABOUR RELATIONS ACT. ACCORDING TO KEUHL, PURSUANT TO THAT SECTION OF THE ACT, STEEL CLAIMED TO HOLD THE BARGAINING RIGHTS FOR THE EMPLOYEES OF BARLOCK AT THE MINE AND SOUGHT TO BARGAIN WITH BARLOCK FOR A COLLECTIVE AGREEMENT. BARLOCK DID NOT REPLY TO THE REQUEST AND STEEL APPLIED FOR CONCILIATION. IT IS THIS REQUEST THAT HAS RESULTED IN THE INSTANT REFERENCE FROM THE MINISTER TO THE BOARD.

14. COUNSEL FOR STEEL SUBMITS THAT IN THE SPRING OF 1970, KIDD COPPER SOLD ITS BUSINESS IN THE SPANISH RIVER MINE TO BARLOCK WITHIN THE MEANING OF SECTION 47A OF THE LABOUR RELATIONS ACT. IN SUPPORT OF HIS SUBMISSION, COUNSEL ADVANCED THE FOLLOWING ARGUMENTS. WHEN BARLOCK REOPENED THE MINE IN JUNE OF 1970 IT CARRIED ON THE SAME MINING OPERATIONS FORMERLY CARRIED ON BY KIDD COPPER BEFORE THE LATTER COMPANY SHUT DOWN THE OPERATION OF THE MINE IN MARCH OF 1970. BARLOCK USED THE SAME PHYSICAL PLANT AS KIDD COPPER AND HIRED SOME OF THE FORMER EMPLOYEES OF KIDD COPPER. COUNSEL FURTHER NOTED THAT EFFECTIVE CONTROL OF THE TWO COMPANIES WAS EXERCISED BY J. P. SHERIDAN. WHILE THERE IS NO EVIDENCE BEFORE THE BOARD ON THE POINT, COUNSEL URGED THE BOARD TO DRAW THE INFERENCE THAT BARLOCK ACQUIRED THE SAME FINANCIAL INTEREST IN THE SPANISH RIVER MINE FORMERLY HELD BY KIDD COPPER. COUNSEL FOR THE LABOURERS, ON THE OTHER HAND, SUBMITS THAT THERE WAS

NO SALE OF A BUSINESS WITHIN THE MEANING OF SECTION 47A OF THE ACT FROM KIDD COPPER TO BARLOCK AT THE SPANISH RIVER MINE. IN SUPPORT OF HIS POSITION, COUNSEL MADE PARTICULAR REFERENCE TO THE EVIDENCE OF KANA THAT BARLOCK WAS A DEVELOPMENT COMPANY WITH NO ASSETS OTHER THAN TWO FRONT-END LOADERS. COUNSEL NOTED ALSO THE TESTIMONY OF KANA THAT THERE HAD BEEN NO TRANSFER OF ANY ASSETS BY KIDD COPPER TO BARLOCK OR THE PAYMENT OF ANY CONSIDERATION BY BARLOCK TO KIDD COPPER.

15. THE BEST EVIDENCE BEFORE THE BOARD AS TO WHAT TRANSPIRED AS BETWEEN KIDD COPPER AND BARLOCK IS THAT OF KANA WHICH IS OUTLINED ABOVE. HIS EVIDENCE, HOWEVER, BY HIS OWN ADMISSION, IS INCOMPLETE, AND IN PART BASED ON EDUCATED SPECULATIONS. MORE SPECIFICALLY, THERE IS A VIRTUAL ABSENCE OF EVIDENCE AS TO THE ARRANGEMENTS ENTERED INTO BY SPANISH RIVER MINE AND/OR KIDD COPPER OR BOTH COMPANIES AS PARTNERS IN THE JOINT VENTURE AND BARLOCK IN THE SPRING OF 1970, BOTH WITH RESPECT TO THE FURTHER DEVELOPMENT WORK AND THE PRODUCTIONS AT THE MINE. WE DO NOT FEEL IT UNREASONABLE TO ASSUME THAT J. P. SHERIDAN WHO, ACCORDING TO THE EVIDENCE, WAS THE PRINCIPAL SHAREHOLDER OF ALL THREE COMPANIES AND THE PERSON WHO EXERCISED EFFECTIVE CONTROL OVER THEM COULD HAVE REMEDIED THE ABOVE REFERRED TO SHORTCOMINGS IN THE EVIDENCE BEFORE THE BOARD. HE WAS IN ATTENDANCE AT THE HEARING UNDER SUBPOENA ISSUED BY STEEL. COUNSEL FOR STEEL, HOWEVER, ELECTED NOT TO CALL HIM AS A WITNESS.

16. WHEN BARLOCK DID THE DEVELOPMENT WORK AT THE SPANISH RIVER MINE IN 1968 AND 1969, THE EVIDENCE IS THAT IT WAS PAID ON A PERCENTAGE FEE BASIS. FURTHER, THE EVIDENCE IS THAT THE FINANCIAL RISK IN THE MINE WAS VESTED IN THE JOINT VENTURE COMPOSED OF KIDD COPPER AND SPANISH RIVER MINE LIMITED. IN THE FACE OF THIS EVIDENCE, WE ARE NOT PREPARED TO DRAW THE INFERENCE URGED UPON US BY COUNSEL FOR STEEL THAT WHEN BARLOCK TOOK OVER THE PRODUCTION OPERATIONS OF THE MINE IT ACQUIRED THE SAME FINANCIAL INTEREST IN THE MINE FORMERLY HELD BY KIDD COPPER. ACCORDINGLY, BASED ON ALL OF THE EVIDENCE, OR PERHAPS MORE ACCURATELY THE LACK OF SAME, WE ARE NOT ABLE TO MAKE A FINDING THAT THERE WAS A SALE OF THE BUSINESS OF KIDD COPPER TO BARLOCK AT THE SPANISH RIVER MINE WITHIN THE MEANING OF SECTION 47A OF THE ACT. IT FOLLOWS THAT THE BOARD IS IN NO POSITION TO MAKE A DECLARATION THAT STEEL CONTINUED TO BE THE BARGAINING AGENT FOR THE EMPLOYEES OF BARLOCK IN THE LIKE BARGAINING UNIT FOR WHICH STEEL HAD HELD BARGAINING RIGHTS AMONG THE EMPLOYEES OF KIDD COPPER AT SPANISH RIVER MINE.

17. STEEL IN ITS REQUEST TO THE MINISTER CLAIMED THAT IT WAS ENTITLED TO THE APPOINTMENT OF A CONCILIATION OFFICER ON THE GROUNDS THAT THERE HAD BEEN A SALE OF THE BUSINESS OF KIDD COPPER TO BARLOCK AT SPANISH RIVER MINE WITHIN THE MEANING OF SECTION 47A OF THE ACT. AS THE BOARD FOUND IN THE FOREGOING PARAGRAPH, THE EVIDENCE DOES NOT SUPPORT THE ABOVE CONTENTION OF STEEL.

18. THE ANSWER TO THE QUESTION REFERRED TO THE BOARD THEREFORE IS THAT THE MINISTER IS WITHOUT AUTHORITY UNDER THE LABOUR RELATIONS ACT TO APPOINT A CONCILIATION OFFICER IN THIS MATTER.

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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING FEBRUARY 1971

BARGAINING AGENTS CERTIFIED DURING FEBRUARY

No Vote Conducted

18063-70-R: INTERNATIONAL UNION OF DOLL & TOY WORKERS OF THE U.S.A. & CANADA, LOCAL 905 (APPLICANT) V. IRWIN TOY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

- AND -

18064-70-R: INTERNATIONAL UNION OF DOLL & TOY WORKERS OF THE U.S.A. & CANADA, LOCAL 905 (APPLICANT) V. IRWIN TOY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN AND FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (223 EMPLOYEES IN THE UNIT).

(SEE DECISION [1971] OLRB REP. 52).

18362-70-R: TORONTO TYPOGRAPHICAL UNION, No. 91 (APPLICANT) V. WILLOW PRESS (RESPONDENT) V. LOCAL #28, INTERNATIONAL BROTHERHOOD OF BOOK-BINDERS (INTERVENER #1) V. TORONTO PRINTING PRESSMEN & ASSISTANTS' UNION No. 10 (INTERVENER #2) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO ENGAGED IN COMPOSING ROOM, PRESS ROOM AND BINDERY WORK, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (10 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

(SEE DECISION [1971] OLRB REP. 59).

18687-70-R: NURSES' ASSOCIATION ST. CATHARINES GENERAL HOSPITAL (APPLICANT) V. THE ST. CATHARINES GENERAL HOSPITAL (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT #1: "ALL REGISTERED AND GRADUATE NURSES EMPLOYED BY THE RESPONDENT AT ST. CATHARINES, ENGAGED IN NURSING OR TEACHING, SAVE AND EXCEPT ASSISTANT SUPERVISORS AND PERSONS ABOVE THE RANK OF ASSISTANT SUPERVISOR AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (282 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

UNIT #2: "ALL REGISTERED AND GRADUATE NURSES OF THE RESPONDENT AT ST. CATHARINES, REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, SAVE AND EXCEPT ASSISTANT SUPERVISORS AND PERSONS ABOVE THE RANK OF ASSISTANT SUPERVISOR." (58 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

18743-70-R: SUDBURY TYPOGRAPHICAL UNION, No. 846 (APPLICANT) V. THE JOURNAL PRINTING COMPANY (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SUDBURY, ENGAGED IN COMPOSING ROOM PRESSROOM, BINDERY AND LITHOGRAPHIC PROCESS WORK, SAVE AND EXCEPT NON-WORKING FOREMEN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (13 EMPLOYEES IN THE UNIT).

(SEE DECISION [1971] OLRB REP. 70).

18815-70-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. PUBLIC UTILITIES COMMISSION OF THE CORPORATION OF THE TOWN OF COLLINGWOOD (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT SUPERINTENDENTS AND FOREMEN, PERSONS ABOVE THE RANK OF SUPERINTENDENT AND FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (17 EMPLOYEES IN THE UNIT). (FOR THE PURPOSES OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT METER READERS ARE NOT INCLUDED IN THE BARGAINING UNIT).

18864-70-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. B-A CONSTRUCTION LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES AND ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF KENORA, INCLUDING THE PATRICIA PORTION, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

18873-70-R: SERVICE EMPLOYEES UNION, LOCAL 210 (APPLICANT) V. THE DIOCESAN ROMAN CATHOLIC HIGH SCHOOL BOARD OF METROPOLITAN WINDSOR (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, AND OFFICE STAFF." (4 EMPLOYEES IN THE UNIT).

18878-70-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS UNION,

LOCAL 880 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. LEON'S FURNITURE MARKET (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (4 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE SUBMISSIONS OF THE PARTIES).

18882-70-R: THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. HAWKESBURY HYDRO-ELECTRIC COMMISSION (RESPONDENT).

UNIT #1: "ALL EMPLOYEES OF THE RESPONDENT AT HAWKESBURY, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (4 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE SUBMISSIONS AND THE AGREEMENT OF THE PARTIES).

UNIT #2: "ALL EMPLOYEES OF THE RESPONDENT AT HAWKESBURY, SAVE AND EXCEPT OFFICE SUPERINTENDENT AND PERSONS ABOVE THE RANK OF OFFICE SUPERINTENDENT." (2 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE SUBMISSIONS OF THE PARTIES).

18903-70-R: LOCAL UNION 1766 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (AFL-CIO-CLC) (APPLICANT) V. GEORGETOWN HYDRO-ELECTRIC COMMISSION (RESPONDENT).

UNIT: "ALL OFFICE EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT ASSISTANT MANAGER, PERSONS ABOVE THE RANK OF ASSISTANT MANAGER AND SALES STAFF." (5 EMPLOYEES IN THE UNIT).

18905-70-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. WELDED TUBE OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF VAUGHAN, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (31 EMPLOYEES IN THE UNIT).

18906-70-R: SARNIA TYPOGRAPHICAL UNION, LOCAL 837 (APPLICANT) V. CANADIAN PRINTING COMPANY SARNIA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SARNIA, SAVE AND EXCEPT ASSISTANT MANAGER, PERSONS ABOVE THE RANK OF ASSISTANT MANAGER, OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT." (5 EMPLOYEES IN THE UNIT).

18918-70-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. SUN

LIFE ASSURANCE COMPANY OF CANADA (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT THE SUN LIFE BUILDING, 200 UNIVERSITY AVENUE, TORONTO, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT WITH THE CANADIAN UNION OF OPERATING ENGINEERS, LOCAL 101." (22 EMPLOYEES IN THE UNIT). (THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT INSURANCE AGENTS AND COMPUTER OPERATORS ARE NOT INCLUDED IN THE BARGAINING UNIT).

18934-70-R: DRAFTSMEN'S ASSOCIATION OF ONTARIO LOCAL NO. 164, AMERICAN FEDERATION OF TECHNICAL ENGINEERS (APPLICANT) V. PROVINCIAL CRANE DIVISION OF DOMINION BRIDGE COMPANY LIMITED (RESPONDENT) V. INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (INTERVENER).

UNIT: "ALL DRAFTSMEN EMPLOYED BY THE RESPONDENT IN ITS DRAWING OFFICE AT NIAGARA FALLS, SAVE AND EXCEPT SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR." (19 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

18946-70-R: BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 532 (APPLICANT) V. RES-LIB LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS FOOD MANAGEMENT DIVISION AT MCMASTER UNIVERSITY, HAMILTON, SAVE AND EXCEPT CHEFS, ASSISTANT MANAGER, SUPERVISORS, PERSONS ABOVE THE RANKS OF CHEF, ASSISTANT MANAGER AND SUPERVISOR, OFFICE STAFF, HEAD BAKER, PERSONS HIRED UNDER A REHABILITATION PROGRAM AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (77 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

18949-70-R: TEAMSTERS LOCAL UNION NO. 879 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. MASTER INDUSTRIAL & ENGINEERED SERVICES LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING AT OR OUT OF HAMILTON, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (12 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE SUBMISSIONS OF THE PARTIES). (FOR THE PURPOSE OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE CHIEF MECHANIC IS NOT INCLUDED IN THE BARGAINING UNIT).

18950-70-R: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (APPLICANT) V. BRASS CRAFT CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ST. THOMAS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (44 EMPLOYEES IN THE UNIT).

18953-70-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. STEELE'S ERECTING & HOISTING LIMITED (RESPONDENT).

UNIT: "ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

18954-70-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. H. J. VOTH & SONS LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND CONSTRUCTION LABOURERS ENGAGED IN BUILDING PROJECTS." (9 EMPLOYEES IN THE UNIT).

18955-70-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE WELLAND COUNTY ROMAN CATHOLIC SEPARATE SCHOOL BOARD (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK IN ITS MAINTENANCE, SERVICES AND PLANT OPERATIONS, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT." (52 EMPLOYEES IN THE UNIT).

18956-70-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. TARIEN COMPANY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT AJAX, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (52 EMPLOYEES IN THE UNIT).

18963-70-R: TEAMSTERS' LOCAL UNION 879 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. HOGG FUEL & SUPPLY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WITHIN ITS BUILDERS' SUPPLY DIVISION AT GUELPH, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF PERSONNEL." (2 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

18965-70-R: LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, S.E.I.U., A.F. OF L., C.I.O., C.L.C. (APPLICANT) V. GLENCOE NURSING HOME (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT GENCoe, SAVE AND EXCEPT PROFESSIONAL NURSING STAFF, PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR OR FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (13 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

18966-70-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. B - A CONSTRUCTION LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE DISTRICT OF THUNDER BAY ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (80 EMPLOYEES IN THE UNIT).

18968-70-R: TEAMSTERS LOCAL UNION 879 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. ARTHUR PIKE (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (2 EMPLOYEES IN THE UNIT).

18970-70-R: COUNCIL OF CONCRETE-FORMING TRADE UNIONS (APPLICANT) V. 228092 INVESTMENTS LIMITED, OPERATING AS DEEP FORMING (RESPONDENT).

UNIT: "ALL CARPENTERS, CARPENTERS' APPRENTICES, CONSTRUCTION LABOURERS AND REINFORCING RODMEN IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WENTWORTH AND THE TOWNSHIP OF NASSAGAWEYA AND THE TOWN OF BURLINGTON IN THE COUNTY OF HALTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (24 EMPLOYEES IN THE UNIT).

18972-70-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. DOMINION STORES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES AT HAWKESBURY REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (4 EMPLOYEES IN THE UNIT).

18973-70-R: TEAMSTERS' LOCAL UNION 879 AFFILIATED WITH THE INTERNA-

TIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. ARCHER TRUCK SERVICES LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ST. CATHARINES, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF PERSONNEL, TRUCK AND PARTS SALESMEN, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (15 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

18977-70-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO: CLC (APPLICANT) V. M. LOEB (SUDBURY) LIMITED TRADING AS WAREHOUSE MARKET (TIMMINS) (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES AT TIMMINS, SAVE AND EXCEPT STORE MANAGER, ASSISTANT STORE MANAGER, PERSONS ABOVE THE RANK OF ASSISTANT STORE MANAGER, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (8 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

18990-70-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. QUEENSWAY CONSTRUCTION (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF NIAGARA AND THE COUNTY OF HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

19-70-R: THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRON WORKERS, LOCAL 759 (APPLICANT) V. CARPEN CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL REINFORCING RODMEN IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF THUNDER BAY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

27-70-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. MONTAGNESE CONCRETE AND DRAIN CONTRACTING LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND CONSTRUCTION LABOURERS ENGAGED IN BUILDING PROJECTS." (3 EMPLOYEES IN THE UNIT).

33-70-R: COUNCIL OF CONCRETE-FORMING TRADE UNIONS (APPLICANT) V. R. C. BUILDING SYSTEM (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES, AND ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

APPLICATIONS CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

18705-70-R: GENERAL WORKERS' LOCAL 800, INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA, AND THE INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA, (AFL-CIO-CLC) (APPLICANT) V. DOMINION STORES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES AT CHATHAM AND WALLACEBURG, SAVE AND EXCEPT STORE MANAGERS AND PERSONS ABOVE THE RANK OF STORE MANAGER, OFFICE STAFF AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT." (57 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		39
NUMBER OF PERSONS WHO CAST BALLOTS	39	
NUMBER OF SPOILED BALLOTS	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT LOCAL 800	36	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT LOCAL 800	2	

18833-70-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. J. B. CARROLL ELECTRIC LIMITED (RESPONDENT).

UNIT: "ALL ELECTRICIANS AND ELECTRICIANS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF BRANT AND NORFOLK, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		5
NUMBER OF PERSONS WHO CAST BALLOTS	5	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	5	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	0	

APPLICATIONS FOR CERTIFICATION DISMISSED DURING FEBRUARY

NO VOTE CONDUCTED

18245-70-R: THE CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. CALVERT-DATE ESTATES LIMITED (RESPONDENT). (12 EMPLOYEES).

(SEE DECISION [1971] OLRB REP. 58).

18658-70-R: NURSES' ASSOCIATION WOMEN'S COLLEGE HOSPITAL (APPLICANT) V. WOMEN'S COLLEGE HOSPITAL (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT #1: "ALL REGISTERED AND GRADUATE NURSES EMPLOYED BY THE RESPONDENT AT METROPOLITAN TORONTO ENGAGED IN NURSING AND TEACHING, SAVE AND EXCEPT HEAD NURSES, PERSONS ABOVE THE RANK OF HEAD NURSE AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (177 EMPLOYEES IN THE UNIT). (FOR PURPOSES OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT CO-ORDINATORS ARE ABOVE THE RANK OF HEAD NURSES AND ARE NOT INCLUDED IN BARGAINING UNIT #1). (CERTIFIED).

UNIT #2: "ALL REGISTERED AND GRADUATE NURSES OF THE RESPONDENT AT METROPOLITAN TORONTO REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (45 EMPLOYEES IN THE UNIT). (DISMISSED).

(SEE DECISION [1971] OLRB REP. 65).

18767-70-R: CSAO NATIONAL (INC.) (APPLICANT) V. OAKVILLE TRAFALGAR MEMORIAL HOSPITAL ASSOCIATION (RESPONDENT). (38 EMPLOYEES).

(SEE DECISION [1971] OLRB REP. 70).

18768-70-R: CSAO NATIONAL (INC.) (APPLICANT) V. THE GREATER NIAGARA GENERAL HOSPITAL (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 772 (INTERVENER). (22 EMPLOYEES).

18769-70-R: CSAO NATIONAL (INC.) (APPLICANT) V. OSHAWA GENERAL HOSPITAL (RESPONDENT) V. THE CANADIAN UNION OF OPERATING ENGINEERS LOCAL 101 (INTERVENER). (48 EMPLOYEES).

18770-70-R: CSAO NATIONAL (INC.) (APPLICANT) V. NIAGARA LABORATORIES, DIVISION OF MEDICAL DATA SCIENCES LIMITED (RESPONDENT). (14 EMPLOYEES).

18771-70-R: CSAO NATIONAL (INC.) (APPLICANT) V. THE HAMILTON HEALTH ASSOCIATION (RESPONDENT). (39 EMPLOYEES).

18772-70-R: CSAO NATIONAL (INC.) (APPLICANT) V. THE HAMILTON HEALTH ASSOCIATION (RESPONDENT). (24 EMPLOYEES).

18784-70-R: CAMPBELL/MAILOMATIC EMPLOYEES ASSOCIATION (APPLICANT) V. CAMPBELL REPRODUCTIONS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN OTTAWA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, INSPECTORS, PRODUCTION CONTROL DEPARTMENT EMPLOYEES, SECURITY GUARDS, OFFICE STAFF AND PERSONS EMPLOYED REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK." (65 EMPLOYEES IN THE UNIT).

18879-70-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. NOREGG FARM FRESH EGGS LTD. (RESPONDENT). (23 EMPLOYEES)

18917-70-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. NORTH YORK GENERAL HOSPITAL (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 796 (INTERVENER #1) V. CANADIAN UNION OF GENERAL EMPLOYEES (INTERVENER #2).

UNIT: "ALL EMPLOYEE OF THE RESPONDENT AT THE BOROUGH OF NORTH YORK, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, UNDERGRADUATE DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS AND FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR AND FORMAN, CHIEF ENGINEER, STATIONARY ENGINEERS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND INTERVENER #1, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (336 EMPLOYEES IN THE UNIT). (FOR PURPOSES OF CLARITY AND HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD DECLARED THAT THE TERM "TECHNICAL PERSONNEL" COMPRISES PHYSIOTHERAPISTS, PHYSIOTHERAPIST ASSISTANTS, OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, ELECTRO-ENCEPHALOGRAPHISTS, ELECTRICAL SHOCK THERAPISTS, LABORATORY, RADIOLOGICAL, PATHOLOGICAL AND CARDIOLOGICAL TECHNICIANS). (THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE HEAD BAKER IS NOT INCLUDED IN THE VOTING CONSTITUENCY AND THAT WARD CLERKS, CASHIERS, SWITCHBOARD OPERATORS AND SPECIAL DIET CLERKS ARE EXCLUDED FROM THE VOTING CONSTITUENCY UNDER THE CLASSIFICATION OF OFFICE STAFF).

18924-70-R: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNION 1687 (APPLICANT) V. SHAFT SINKERS (CANADA) LIMITED AND J. S. REDPATH LIMITED, A JOINT VENTURE (RESPONDENT) V. UNITED STEELWORKERS OF AMERICA (INTERVENER). (17 EMPLOYEES).

18987-70-R: CENTRAL ONTARIO DISTRICT COUNCIL, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. BENNETT-PRATT LIMITED (RESPONDENT). (4 EMPLOYEES).

CERTIFICATION DISMISSED SUBSEQUENT TO PRE-HEARING VOTE

18812-70-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. SIMPLICITY PRODUCTS LIMITED (RESPONDENT) V. SIMPLICITY WORKERS' ASSOCIATION (INTERVENER).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT HESPELER, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, ALL OTHER SALARIED EMPLOYEES, STUDENTS EMPLOYED AS SUMMER WORKERS, AND PART TIME WORKERS." (186 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	185
NUMBER OF PERSONS WHO CAST BALLOTS	185
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	54
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	131

18894-70-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. WIRE ROPE INDUSTRIES OF CANADA LTD. (RESPONDENT) V. THE CANADIAN WIREWORKERS INDEPENDENT UNION (INTERVENER).

VOTING CONSTITUENCY: "ALL HOURLY RATED EMPLOYEES OF THE RESPONDENT EMPLOYED AT ITS PLANT AT SMITHS FALLS, SAVE AND EXCEPT FOREMEN, ASSISTANT FOREMEN, SUPERVISORS AND GUARDS." (79 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	77
NUMBER OF PERSONS WHO CAST BALLOTS	77
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	21
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	56

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

18842-70-R: OPTICAL & PLASTIC TECHNICIANS & ALLIED WORKERS UNION, LOCAL 67 OF THE U.H.C. & M.W.I.U. - C.L.C. (APPLICANT) V. BAUSCH & LOMB OPTICAL COMPANY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT 16 COLDWATER ROAD, DON MILLS, SAVE AND EXCEPT FOREMEN, THOSE ABOVE THE RANK OF FOREMEN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE VACATION PERIOD." (28 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		25
NUMBER OF PERSONS WHO CAST BALLOTS	25	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	7	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	18	

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING FEBRUARY

18589-70-R: THE TECHNICAL EMPLOYEES ASSOCIATION OF MICROSYSTEMS INTERNATIONAL LIMITED (APPLICANT) V. MICROSYSTEMS INTERNATIONAL LIMITED (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (INTERVENER). (87 EMPLOYEES).

18895-70-R: RETAIL AND FOOD EMPLOYEES LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. THE GREAT ATLANTIC AND PACIFIC TEA COMPANY, LIMITED (RESPONDENT). (13 EMPLOYEES).

18976-70-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. EASTERN CONSTRUCTION COMPANY LTD. (RESPONDENT). (2 EMPLOYEES).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED
OF DURING FEBRUARY

18696-70-R: WERNER TROST, G. FORTIN, C. RAMSEY, J. SMITH AND A. MILLER (APPLICANTS) V. CANADIAN UNION OF OPERATING ENGINEERS (RESPONDENT). (GRANTED).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED IN THE BOILER ROOM OF ST. JOSEPH'S HOSPITAL IN GUELPH, SAVE AND EXCEPT THE CHIEF ENGINEER." (6 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		5
NUMBER OF PERSONS WHO CAST BALLOTS	5	
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	0	
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	5	

18731-70-R: UNITED CENTURY THEATRES LIMITED (APPLICANT) V. BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION, AFL CIO CLC Local No. 204 (RESPONDENT). (GRANTED).

UNIT: "ALL EMPLOYEES OF UNITED CENTURY THEATRES LIMITED EMPLOYED AT THE LOEW'S UPTOWN AND LOEW'S DOWNTOWN THEATRES IN TORONTO, SAVE AND EXCEPT ASSISTANT MANAGER, PERSONS ABOVE THE RANK OF ASSISTANT MANAGER, OFFICE STAFF, STATIONARY ENGINEERS, PROJECTIONISTS, STAGE HANDS AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (4 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	22
NUMBER OF PERSONS WHO CAST BALLOTS	22
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF RESPONDENT	3
NUMBER OF BALLOTS MARKED AGAINST	
RESPONDENT	19

18774-70-R: HARRY DONALD BEANLAND (APPLICANT) V. W. A. ADAMS OF LOCAL 197 OF THE HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION, A.F.L. C.I.O. C.L.C. (RESPONDENT). (DISMISSED). (3 EMPLOYEES).

18835-70-R: GEORGE CHASE (APPLICANT) V. HOTEL & RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION LOCAL 197 (RESPONDENT). (GRANTED).

UNIT: "ALL EMPLOYEES OF THE BRITANNIA PUBLIC HOUSE AT HAMILTON EMPLOYED IN ITS BEVERAGE ROOMS AND COCKTAIL LOUNGES AND DINING LOUNGES IN THE CLASSIFICATIONS OF BARTENDERS, TAPMEN, WAITERS BARBOYS AND/OR IMPROVERS." (4 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	4
NUMBER OF PERSONS WHO CAST BALLOTS	4
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF RESPONDENT	0
NUMBER OF BALLOTS MARKED AGAINST	
RESPONDENT	4

18962-70-R: RICHARD REGNIER (APPLICANT) V. INTERNATIONAL LEATHER GOODS, PLASTIC & NOVELTY WORKERS UNION (RESPONDENT) V. COMPO RECORDS (ONTARIO) LIMITED (INTERVENER). (WITHDRAWN). (371 EMPLOYEES).

APPLICATION FOR DECLARATION OF SUCCESSOR STATUS DISPOSED OF DURING

FEBRUARY

18428-70-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. NAVCO FOOD SERVICES LIMITED (FORMERLY NATIONAL AUTOMATIC VENDING COMPANY LIMITED) (RESPONDENT) V. HOTEL & RESTAURANT EMPLOYEES AND BARTENDERS' INTERNATIONAL UNION, RESTAURANT, CAFETERIA AND TAVERN EMPLOYEES UNION, LOCAL 254 (INTERVENER). (DISMISSED).

(SEE DECISION [1971] OLRB REP. 80).

APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING

FEBRUARY

18385-70-U: TRANE COMPANY OF CANADA LIMITED (APPLICANT) V. UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA, LOCAL 512 (RESPONDENT). (WITHDRAWN).

18908-70-U: THE GREAT ATLANTIC AND PACIFIC TEA COMPANY, LIMITED (APPLICANT) V. VICTOR ALESSANDRO ET AL (RESPONDENTS). (WITHDRAWN).

18932-70-U: ARMSTRONG-HODGE CONSTRUCTION COMPANY LIMITED (APPLICANT) V. STEVE TEICHT AND GARY COLE (RESPONDENTS). (GRANTED).

18933-70-U: DURCARD MECHANICAL CONTRACTORS LTD. (APPLICANT) V. KEN MOONEY AND STAN CARON (RESPONDENTS). (GRANTED).

(SEE DECISION [1971] OLRB REP. 86).

18938-70-U: VIBRO-ACOUSTICS LTD. (APPLICANT) V. THE SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, LOCAL UNION NO. 540 OF TORONTO, ONTARIO (RESPONDENT). (WITHDRAWN).

18939-70-U: VIBRO-ACOUSTICS LTD. (APPLICANT) V. GEORGE ASSENZA ET AL (RESPONDENTS). (WITHDRAWN).

15-70-U: ARMOR ELEVATOR CANADA LIMITED (APPLICANT) V. THOSE PERSONS NAMED IN SCHEDULES "A" AND "B" ATTACHED HERETO (RESPONDENTS). (WITHDRAWN).

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18435-70-U: INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK & DISTILLERY WORKERS OF AMERICA, AFL-CIO-CLC (APPLICANT) V. CHARLES WILSON LIMITED (RESPONDENT). (WITHDRAWN).

18707-70-U: MONTEITH-MCGRATH LIMITED (APPLICANT) V. MAURICE TAYLOR (RESPONDENT). (DISMISSED).

18874-70-U: HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION A.F.L. C.I.O. C.L.C., LOCAL 197 (APPLICANT) V. WENTWORTH ARMS HOTEL LIMITED (RESPONDENT). (WITHDRAWN).

18886-70-U: RALPH M. PARSONS CONSTRUCTION CO. OF CANADA LIMITED (APPLICANT) V. LARRY G. ARMSTRONG ET AL (RESPONDENTS). (WITHDRAWN).

18887-70-U: RALPH M. PARSONS CONSTRUCTION CO. OF CANADA LIMITED (APPLICANT) V. LIONEL MENARD ET AL (RESPONDENTS). (WITHDRAWN).

18888-70-U: RALPH M. PARSONS CONSTRUCTION CO. OF CANADA LIMITED (APPLICANT) V. GERARD CHIASSON ET AL (RESPONDENTS). (WITHDRAWN).

18890-70-U: RALPH M. PARSONS CONSTRUCTION CO. OF CANADA LIMITED (APPLICANT) V. EDDIE PIZZOLATO ET AL (RESPONDENTS). (WITHDRAWN).

18891-70-U: RALPH M. PARSONS CONSTRUCTION CO. OF CANADA LIMITED (APPLICANT) V. CLAUDE LANDRY ET AL (RESPONDENTS). (WITHDRAWN).

18892-70-U: RALPH M. PARSONS CONSTRUCTION CO. OF CANADA LIMITED (APPLICANT) V. HENRI KOSKI ET AL (RESPONDENTS). (WITHDRAWN).

18897-70-U: RALPH M. PARSONS CONSTRUCTION CO. OF CANADA LIMITED (APPLICANT) V. NORMAN J. DOW ET AL (RESPONDENTS). (WITHDRAWN).

18898-70-U: RALPH M. PARSONS CONSTRUCTION CO. OF CANADA LIMITED (APPLICANT) V. WILLIAM MARCHILDON ET AL (RESPONDENTS). (WITHDRAWN).

18899-70-U: RALPH M. PARSONS CONSTRUCTION CO. OF CANADA LIMITED (APPLICANT) V. FRED T. McCAFFERTY ET AL (RESPONDENTS). (WITHDRAWN).

18900-70-U: RALPH M. PARSONS CONSTRUCTION CO. OF CANADA LIMITED (APPLICANT) V. RENE DUMONT ET AL (RESPONDENTS). (WITHDRAWN).

18935-70-U: THE LUMMUS COMPANY CANADA LIMITED (APPLICANT) V. LOCAL 527 OF THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, AFL-CIO-CLC (RESPONDENT). (WITHDRAWN).

18936-70-U: THE LUMMUS COMPANY CANADA LIMITED (APPLICANT) V. J. PORTER (RESPONDENT). (WITHDRAWN).

18937-70-U: THE LUMMUS COMPANY CANADA LIMITED (APPLICANT) V. K. WHITFIELD, ET AL (RESPONDENTS). (WITHDRAWN).

18940-70-U: VIBRO-ACOUSTICS LTD. (APPLICANT) V. GEORGE ASSENZA ET AL (RESPONDENTS). (WITHDRAWN).

18941-70-U: VIBRO-ACOUSTICS LTD. (APPLICANT) V. JAMES ALBERT BURNETT (RESPONDENTS). (WITHDRAWN).

18942-70-U: VIBRO-ACOUSTICS LTD. (APPLICANT) V. ROBERT BETTERIDGE (RESPONDENT). (WITHDRAWN).

18943-70-U: VIBRO-ACOUSTICS LTD. (APPLICANT) V. GORDON MCKELLAR (RESPONDENT). (WITHDRAWN).

18944-70-U: VIBRO-ACOUSTICS LTD. (APPLICANT) V. THE SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, LOCAL UNION NO. 540 OF TORONTO, ONTARIO (RESPONDENT). (WITHDRAWN).

18952-70-U: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) V. MARSLAND ENGINEERING LIMITED (RESPONDENT). (GRANTED).

18985-70-U: THE BRICKLAYERS, MASONS AND PLASTERERS INTERNATIONAL UNION OF AMERICA (APPLICANT) V. PARON CONSTRUCTION (EASTERN) LTD. (RESPONDENT). (WITHDRAWN).

36-70-U: VINCENT TICCONE (APPLICANT) V. BRICKLAYERS, MASONS AND PLASTERERS INTERNATIONAL UNION OF AMERICA (RESPONDENT). (WITHDRAWN).

37-70-U: PIETRO CAL (APPLICANT) V. BRICKLAYERS, MASONS AND PLASTERERS INTERNATIONAL UNION OF AMERICA (RESPONDENT). (WITHDRAWN).

38-70-U: CIACOMO GIAVINAZZO (APPLICANT) V. BRICKLAYERS, MASONS AND PLASTERERS INTERNATIONAL UNION OF AMERICA (RESPONDENT). (WITHDRAWN).

39-70-U: ANTHONY ODORICO (APPLICANT) V. BRICKLAYERS, MASONS AND PLASTERERS INTERNATIONAL UNION OF AMERICA (RESPONDENT). (WITHDRAWN).

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6-70-PH: CANADIAN UNION OF OPERATING ENGINEERS - LOCAL 101 (APPLICANT) V. (THE CORPORATION OF) THE BOARD OF GOVERNORS OF THE RIVERDALE HOSPITAL (RESPONDENT). (GRANTED).

(SEE DECISION [1971] OLRB REP. 91).

7-70-PH: CANADIAN UNION OF OPERATING ENGINEERS LOCAL 101 (APPLICANT) V. ST. JOSEPH'S HOSPITAL (RESPONDENT). (GRANTED).

8-70-PH: THE CANADIAN UNION OF OPERATING ENGINEERS LOCAL 101 (APPLICANT) V. CENTRAL HOSPITAL (RESPONDENT). (DISMISSED).

(SEE DECISION [1971] OLRB REP. 93).

COMPLAINTS UNDER SECTION 65 (UNFAIR PRACTICE) DISPOSED OF DURING

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18718-70-U: TEAMSTERS' LOCAL UNION NO. 879 (COMPLAINANT) V. NATIONAL GROCERS COMPANY LIMITED (CASH AND CARRY DEPOT, WELLAND, ONTARIO) (RESPONDENT). (WITHDRAWN).

18722-70-U: CANADIAN UNION OF PUBLIC EMPLOYEES (COMPLAINANT) V. LITTLE'S NURSING HOME LTD. (RESPONDENT). (WITHDRAWN).

18785-70-U: INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA, AFL-CIO-CLC (COMPLAINANT) V. SEVEN-UP (ONTARIO) LIMITED (RESPONDENT). (DISMISSED).

(SEE DECISION [1971] OLRB REP. 94).

18807-70-U: RETAIL CLERKS INTERNATIONAL ASSOCIATION (COMPLAINANT) V. DRYDEN CLEANERS & LAUNDERERS (RESPONDENT). (WITHDRAWN).

18810-70-U: RETAIL CLERKS INTERNATIONAL ASSOCIATION (COMPLAINANT) V. DRYDEN CLEANERS & LAUNDERERS (RESPONDENT). (WITHDRAWN).

18821-70-U: GORDON INSLEY (COMPLAINANT) V. CALVERT-DALE ESTATES (RESPONDENT). (DISMISSED).

18869-70-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. HARRY RUBIN & SON LTD. (RESPONDENT). (WITHDRAWN).

18910-70-U: L. HEMMERECHTS AND THE CANADIAN UNION OF OPERATING ENGINEERS LOCAL 101 (COMPLAINANT) V. CENTRAL HOSPITAL (RESPONDENT). (DISMISSED).

18927-70-U: BOOT AND SHOE WORKERS' UNION AFFILIATED WITH THE C.L.C.-A.F.L.-C.I.O. (COMPLAINANT) V. ELEGANT SHOE CO. LTD. (RESPONDENT). (WITHDRAWN).

18959-70-U: LEO HEMMERECHTS (COMPLAINANT) V. CENTRAL HOSPITAL (RESPONDENT). (DISMISSED).

18967-70-U: RETAIL CLERKS INTERNATIONAL ASSOCIATION (COMPLAINANT) V. M. LOEB (LONDON) LTD. (RESPONDENT). (WITHDRAWN).

18986-70-U: THE BRICKLAYERS, MASONS AND PLASTERERS INTERNATIONAL UNION OF AMERICA (COMPLAINANT) V. PARON CONSTRUCTION (EASTERN) LTD. (RESPONDENT). (WITHDRAWN).

APPLICATIONS FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT

18926-70-M: THE CANADIAN LINEN SUPPLY (ONTARIO) LIMITED (COMPANY) V. THE LAUNDRY, DRY CLEANING AND DYE HOUSE WORKERS' INTERNATIONAL UNION, LOCAL #351 (TRADE UNION). (GRANTED).

18929-70-M: GANZ BROTHERS TOYS LIMITED (COMPANY) V. INTERNATIONAL UNION OF DOLL AND TOY WORKERS OF U.S.A. AND CANADA, LOCAL 905 (TRADE UNION). (GRANTED).

18960-70-M: MANSFIELD-DENMAN GENERAL COMPANY LIMITED, INDUSTRIAL PRODUCTS DIVISION (EMPLOYER) V. LOCAL UNION 455, UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA (TRADE UNION). (GRANTED).

APPLICATION UNDER SECTION 47A DISPOSED OF DURING FEBRUARY

18923-70-M: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES LOCAL UNION No. 647 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. THE PURITY DAIRIES LIMITED, CHATHAM BRANCH, AND R & I DISTRIBUTORS (RESPONDENTS). (DISMISSED).

APPLICATIONS FOR DETERMINATION UNDER SECTION 79(2) DISPOSED OF

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18747-70-M: UNITED GLASS & CERAMIC WORKERS OF NORTH AMERICA (AFL-CIO-CLC) AND ITS LOCAL 246 (APPLICANT) V. DOMINION GLASS COMPANY LIMITED, WALLACEBURG, ONTARIO (RESPONDENT).

18776-70-M: THE CANADIAN UNION OF PUBLIC EMPLOYEES AND ITS LOCAL #140 (APPLICANT) V. CORPORATION OF THE CITY OF BELLEVILLE (RESPONDENT).

18951-70-M: CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 1019 (APPLICANT) V. THE LAMBTON COUNTY BOARD OF EDUCATION (RESPONDENT). (WITHDRAWN).

REFERENCE TO BOARD PURSUANT TO SECTION 79A

18622-70-M: BARLOCK LIMITED, FORMERLY KIDD COPPER MINES LIMITED (EMPLOYER) V. UNITED STEELWORKERS OF AMERICA (TRADE UNION) V. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (TRADE UNION).

(SEE DECISION [1971] OLRB REP. 104).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

18676-70-R: INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (APPLICANT) V. RIVERSIDE HOSPITAL OF OTTAWA (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (REQUEST DENIED).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - PROSECUTION

18594-70-U: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. AGILIS CORPORATION LIMITED CARRYING ON BUSINESS UNDER THE FIRM NAME AND STYLE OF SUBURBAN SANITATION (RESPONDENT). (REQUEST DENIED).

(SEE DECISION [1971] OLRB REP. 89).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - SECTION 65

18666-70-U: TORONTO MAILERS' UNION, No. 5 (COMPLAINANT) V. TORONTO STAR LIMITED (RESPONDENT). (REQUEST DENIED).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - SECTION 63

18524-70-M: HARRY W. WILSON (COMPLAINANT) v. INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS, BLACKSMITHS, FORGERS AND HELPERS, LOCAL UNION 128 (RESPONDENT). (REQUEST DENIED).

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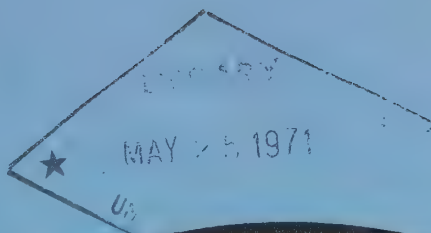
18647-70-M: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. AGILIS CORPORATION LIMITED (RESPONDENT). (REQUEST DENIED).

(SEE DECISION [1971] OLRB REP. 98).

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ONTARIO LABOUR RELATIONS BOARD REPORTS

A MONTHLY SERIES OF DECISIONS FROM THE

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BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS H. F. IRWIN AND P. J. O'KEEFFE.

APPEARANCES AT THE HEARING: LORNE INGLE AND ARNE PAABOR FOR THE APPLICANT; C. G. RIGGS FOR THE RESPONDENT; M. C. DILLON FOR THE OBJECTORS.

DECISION OF VICE-CHAIRMAN RORY F. EGAN AND BOARD MEMBER P. J. O'KEEFFE: MARCH 3, 1971.

1. THE HEARING WAS CONDUCTED ON JANUARY 12, 1971 TO HEAR THE REPRESENTATIONS OF THE PARTIES WITH RESPECT TO THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER HEREIN.
 2. THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT KURT BOIN, FLORENCE HOME AND L. DESARBRAIS ARE TO BE ADDED TO THE LIST OF NAMES SUBMITTED TO THE BOARD BY THE RESPONDENT.
 3. THE BOARD NOTES THE FURTHER AGREEMENT OF THE PARTIES THAT T. DE MUNNIK EXERCISES MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND IS THEREFORE EXCLUDED FROM THE BARGAINING UNIT.
 4. ON THE BASIS OF THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER, THE BOARD FINDS THAT LLOYD RICKARD IS INCLUDED IN THE BARGAINING UNIT. A MAJORITY OF THE BOARD CONSISTING OF VICE-CHAIRMAN, EGAN AND BOARD MEMBER, IRWIN, FIND THAT EDWARD BENVENUTI, ON THE BASIS OF THE EVIDENCE CONCERNING HIS ASSOCIATION WITH THE OFFICE EMPLOYEES, HIS HOURS OF WORK AND THE SOURCE OF HIS INSTRUCTIONS AND HIS SPECIFIC EXCLUSION FROM THE PLANT UNIT REPRESENTED BY THE APPLICANT, HAS A COMMUNITY OF INTEREST WITH THE OTHER EMPLOYEES IN THE BARGAINING UNIT SUFFICIENT TO WARRANT HIS INCLUSION IN THE UNIT. A MAJORITY OF THE BOARD CONSISTING OF VICE-CHAIRMAN, EGAN AND BOARD MEMBER, IRWIN, FIND ON THE BASIS OF THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER THAT BARRY COTTRELL DOES NOT EXERCISE MANAGERIAL FUNCTIONS AND IS NOT EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT AND IS THEREFORE INCLUDED IN THE BARGAINING UNIT.
- . . .
6. THE APPLICANT TOOK THE POSITION THAT JOHN SANDERS, CLASSIFIED BY THE RESPONDENT AS METALLURGIST, EXERCISES MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND SHOULD THEREFORE BE EXCLUDED FROM THE BARGAINING UNIT.

7. THERE IS EVIDENCE IN THE REPORT THAT WHEN SANDERS WAS HIRED, HIS DUTIES AND RESPONSIBILITIES WERE EXPLAINED TO HIM BY MR. HARSHAW. HARSHAW IS THE MANAGER OF THE BIT PLANT. THERE HAVE BEEN NO MAJOR CHANGES IN THE SANDERS' JOB CONTENT SINCE THE DATE HE WAS HIRED. SANDERS STATED THAT HE IS ASSISTANT TO MR. HARSHAW.
8. IN REPLY TO QUESTIONS PUT TO HIM BY THE EXAMINER, SANDERS STATED THAT HE DOES NOT ASSIGN WORK TO EMPLOYEES - IS NOT INVOLVED IN KEEPING TIME RECORDS - HAS NO PART IN HIRING OR TERMINATING EMPLOYEES - DOES NOT RECOMMEND PROMOTION OR DEMOTION OR WAGE INCREASES - HAS NO AUTHORITY TO GRANT TIME OFF - HAS NOT DISCIPLINED OR REPRIMANDED EMPLOYEES. IN REPLY TO QUESTIONS PUT TO HIM ON THE LATTER POINT BY COUNSEL FOR THE APPLICANT, SANDERS SAID THAT HE DOES NOT BELIEVE HE HAD REPRIMANDED OR DISCIPLINED ANY EMPLOYEE - THAT HE CANNOT REMEMBER HAVING DISCIPLINED AN EMPLOYEE. SANDERS' EVIDENCE IS ALSO TO THE FACT THAT HE HAS NOT ATTENDED FOREMEN'S MEETINGS OR ANY MEETINGS WHERE LABOUR RELATIONS ARE DISCUSSED.
9. SANDERS DID, HOWEVER, ATTEND FIVE OR SIX MEETINGS WHICH WERE REGULARLY HELD EACH MONTH BETWEEN MANAGEMENT AND UNION REPRESENTATIVES. THE PURPOSE OF THE MEETINGS WAS TO DISCUSS UNION MANAGEMENT PROBLEMS, THE OBJECTIVE BEING TO SOLVE THE PROBLEMS BEFORE THEY BECOME GRIEVANCES. THE EVIDENCE IS THAT MR. RINTOUL, MANUFACTURING MANAGER, ASKED SANDERS TO ATTEND THESE MEETINGS BECAUSE HE DID NOT FEEL THAT HE WAS TECHNICALLY QUALIFIED IN THE AREA. THE LAST OF THESE MEETINGS ATTENDED BY SANDERS WAS IN MARCH OF 1970. SANDERS WAS THE ONLY REPRESENTATIVE FROM THE BIT DEPARTMENT TO ATTEND THESE MEETINGS. MINUTES OF THE MEETINGS WERE KEPT BY THE COMPANY. THEY WERE TYPED BY THE COMPANY AND COPIES DISTRIBUTED TO THE UNION. MINUTES OF A NUMBER OF THESE MEETINGS WERE FILED WITH THE BOARD AND ARE REFERRED TO IN THE EXAMINER'S REPORT TO WHICH COPIES WERE ATTACHED AS EXHIBITS. THE NAMES OF THE PARTICIPANTS IN THE MEETINGS ARE SET OUT IN MINUTES UNDER THE HEADINGS OF "UNION" AND "COMPANY" RESPECTIVELY. THE OVERALL HEADING ON THE MINUTS READS "MANAGEMENT AND UNION REPRESENTATIVES REGULAR MONTHLY DISCUSSION PERIOD". THEY BEAR THE NUMBER OF THE SESSION AND THE DATE.
10. MINUTES OF A MEETING HELD ON NOVEMBER 12, 1969 WERE FILED. THEY SHOW LLOYD RINTOUL AND JOHN SANDERS AS BEING THE PARTICIPANTS UNDER THE HEADING "COMPANY". ACCORDING TO THESE MINUTES, DISCUSSIONS WERE CONDUCTED ON BEHALF OF THE COMPANY ENTIRELY BY RINTOUL.
11. MINUTES WERE FILED WITH RESPECT TO A MEETING HELD ON JANUARY 7, 1970. THE COMPANY PARTICIPANTS ARE LISTED AS LLOYD RINTOUL, JOHN SANDERS AND RAY COCHET. THESE MINUTES CONTAIN A HEADING "DIAMOND BIT DEPARTMENT" AND SHOW THE FOLLOWING ENTRY UNDER THAT HEADING "THERE HAS BEEN CONSIDERABLE SCRAP IN THE BIT DEPARTMENT. JOHN SANDERS ADVISED A NEW METHOD OF SCRAP AND PRODUCTION CONTROL WAS TO BE ENFORCED WHICH WILL CERTAINLY REDUCE PAST TROUBLE AREAS."

12. RINTOUL, SANDERS AND COCHET ARE SHOWN AS COMPANY PARTICIPANTS IN THE MINUTES COVERING A MEETING HELD ON FEBRUARY 11, 1970. THE MINUTES INDICATE THAT A UNION PARTICIPANT, REG PARSONS BY NAME, EXPRESSED CONCERN OVER BIT PLANT SUPERVISORS CONTINUING TO GET INVOLVED IN PRODUCTION. THE MINUTES STATED THAT JOHN SANDERS REQUESTED THAT WHEN A COMPLAINT ARISES, SUBSTANTIAL PROOF OF SPECIFIC CASES BE PROVIDED. IT WAS THEN SUGGESTED BY RINTOUL THAT "JOHN SANDERS, MR. HARSHAW, BIT PLANT SUPERVISORS AND JOHN JEWITT GET TOGETHER, DISCUSS AND RESOLVE THE SITUATION." JOHN JEWITT IS NAMED AS A UNION PARTICIPANT IN THE MEETING.

13. A FURTHER QUESTION WAS RAISED AT THIS MEETING WITH RESPECT TO THE HARD PLASTIC DIAMOND TRAYS. JOHN SANDERS REPLIED TO THIS QUESTION AND STATED THAT HE FELT THAT IT WOULD BE AVAILABLE AS SOON AS HE GETS HIS PETTY CASH REPLENISHED.

14. MINUTES OF A MEETING HELD ON APRIL 8TH, 1970 SHOW THE MANAGEMENT PARTICIPANTS TO HAVE BEEN RINTOUL, SANDERS AND COCHET. (IT IS TO BE NOTED THAT IN HIS EVIDENCE, MR. SANDERS STATED THAT THE LAST MEETING HE ATTENDED WAS IN MARCH 1970). THESE MINUTES RECORD THAT JOHN JEWITT INDICATED THAT SUPERVISORS HAD BEEN OBSERVED DOING WORK WHICH SHOULD BE DONE BY UNION MEMBERS. THE MINUTE STATES "SINCE JOHN SANDERS WAS ONE OF THOSE NAMED AND WAS PRESENT AT THE MEETING, THE BIT DEPARTMENT INVOLVEMENT IN THIS SITUATION WAS DISCUSSED." THE MINUTES STATE THAT UNION MEMBERS OBSERVED BIT DEPARTMENT SUPERVISION DOING CERTAIN WORK WHICH IS SET OUT IN DETAIL IN THE MINUTE. JOHN SANDERS, ACCORDING TO THE MINUTE, RESPONDED TO THE ABOVE COMPLAINT AND OFFERED EXPLANATION FOR THE ACTIONS OF THE SUPERVISORS. ONE COMPLAINT HAD TO DO WITH UNLOADING TRUCKS FROM VANCOUVER. THE MINUTES INDICATE THAT JOHN SANDERS AGREED THAT HE HELPED WORKERS BECAUSE OF THE HEAVY WORK. HE ALSO INDICATED THAT THE WORK SHEETS HAD NO DESTINATION POINTS AND THEREFORE HIS OR MR. HARSHAW'S ASSISTANCE WAS NECESSARY. IN REPLY TO A COMPLAINT ABOUT WORKING ON AN EXPERIMENTAL FURNACE, SANDERS STATED THAT IT WAS NECESSARY THAT BIT DEPARTMENT SUPERVISORS BE ACTIVE ON THIS PROJECT BECAUSE IT REQUIRED THE PRESENCE OF SOMEONE FAMILIAR WITH THE EQUIPMENT.

15. A FURTHER QUESTION WAS RAISED AT THE APRIL 8TH MEETING WITH RESPECT TO NEW TWEEZERS AND SHALLOW DISHES IN THE DIAMOND ROOM. AGAIN JOHN SANDERS REPLIED. HE STATED THAT HE HAD SEARCHED FOR SHALLOW DISHES AND HAD NOT BEEN ABLE TO FIND THEM. HE INDICATED THAT HE WOULD MAKE FURTHER INQUIRIES. HE ALSO ADVISED THE UNION THAT TWEEZERS WOULD BE IN SHORTLY. A QUESTION WAS ALSO RAISED WITH RESPECT TO DIAMOND ROOM GIRLS ON LAY-OFF. JOHN SANDERS REPLIED TO THIS QUESTION ALSO AND INDICATED THAT PRESENT ORDERS ON HAND WOULD NOT REQUIRE THE GIRLS BUT THAT THEY WOULD BE RECALLED AS SOON AS SUFFICIENT WORK WAS ON HAND.

16. THE UNION CALLED AS A WITNESS REG PARSONS, WHO HAS BEEN EMPLOYED BY THE RESPONDENT FOR FOUR AND A HALF YEARS, FOUR OF WHICH WERE SPENT IN THE BIT PLANT. HE STATED THAT FROM HIS OBSERVATIONS MR. SANDERS' POSITION INCLUDES SUPERVISION OF PRODUCTION, ADVISING FOREMEN, ACTING AS FOREMAN IN PRODUCTION WHEN FOREMEN ARE AWAY AND MORE OR LESS SUPERVISING IN THE SHOP. MADE REFERENCE TO THE MEETING RECORDED IN THE MINUTES AT WHICH MR. SANDERS REQUESTED SPECIFIC TIMES AND EXAMPLES OF SUPERVISORS WORKING IN THE BIT PLANT AND STATED THAT THE MATTER WAS DISCUSSED WITH FOREMEN BY MR. SANDERS AND THAT IT IMPROVED FOR A LITTLE WHILE ONLY. PARSONS ALSO STATED THAT HE AND THE CHIEF STEWARD PRESENTED A GRIEVANCE TO MR. MCCORMACK, VICE-PRESIDENT. THE LATTER ASKED THEM TO SIT DOWN AND DISCUSS THE GRIEVANCE AND TOLD HIS SECRETARY TO GET JOHN SANDERS. WHEN SANDERS APPEARED, THE VICE-PRESIDENT ASKED HIM ABOUT THE SITUATION AND AS TO WHETHER IT HAD BEEN RECTIFIED. SANDERS REPLIED THAT PART OF IT WAS BEING RECTIFIED BUT THE OTHER PART WAS NOT FEASIBLE AT THE TIME.

17. PARSONS TOLD THE EXAMINER THAT SANDERS IS A PERSON WHO COMES AND GOES AS HE PLEASURES AND TELLS PRODUCTION EMPLOYEES TO DO THIS OR THAT JOB. HE STATED THAT SANDERS TOOK THE PLACE OF A FOREMAN IN THE FURNACE DEPARTMENT AND CARBON ROOM FOR TEN DAYS. THIS WOULD APPEAR TO BE THE SAME INCIDENT AS SANDERS REFERRED TO IN HIS TESTIMONY AS HAVING OCCURRED DURING JULY AND AUGUST 1970 WHEN THERE WAS A PLANT SHUTDOWN. PARSONS STATED THAT THERE WERE OTHER TIMES WHEN SANDERS HAD FILLED IN FOR FOREMAN ON PART TIME BASIS.

18. PARSONS' EVIDENCE IS THAT HE HAD RECEIVED ORDERS FROM SANDERS ON A NUMBER OF OCCASIONS. HE MADE REFERENCE TO A HANDWRITTEN MEMORANDUM ADDRESSED TO HIM AND SIGNED BY SANDERS. THE MEMORANDUM IS WRITTEN ON WHAT IT APPEARS TO BE AN OFFICIAL MEMORANDUM FORM. THE TEXT OF THE MEMORANDUM IS AS FOLLOWS:

"IT HAS BEEN BROUGHT TO MY ATTENTION THAT THE CLEANING OUT OF THE TRAPS UNDER THE SINKS IS A FUNCTION OF THE CUT OUT OPERATOR. AS A RESULT OF THIS, WE WILL NOW STOP CUTTING OUT BITS AFTER THE AFTERNOON COFFEE BREAK ON FRIDAYS AND CLEAN UP THE CUT OUT ROOM.

THIS WILL INVOLVE WASHING DOWN THE FAN AND CLEANING OUT THE SINK TRAPS. THE SLUDGE FROM THE TRAPS IS TO BE DUMPED INTO PAILS FOR RECOVERY."

19. HAVING REVIEWED THE MATTERS CONTAINED IN THE MINUTES OF THE MEETINGS, WE MUST FIND THAT SANDERS' PRESENCE THERE AND HAS PARTICIPATION IN THE DISCUSSIONS CLEARLY INDICATE THAT HE DID NOT ACT MERELY AS A TECHNICAL ASSISTANT. IT IS TO BE RECALLED THAT, IN HIS OWN

TESTIMONY, HE IS ASSISTANT TO MR. HARSHAW AS WELL AS BEING A METALLURGIST. IT MUST ALSO BE NOTED THAT THE MINUTES OF THE MEETINGS WERE PREPARED BY THE COMPANY. THE DESIGNATION OF SANDERS AS A PARTICIPANT FOR THE COMPANY IS, THEREFORE, THE COMPANY'S DESIGNATION. IN ADDITION, THE REPEATED REFERENCES IN THE MINUTES TO SANDERS AS ONE OF THE SUPERVISORS IN THE BIT DEPARTMENT IS ATTRIBUTABLE TO THE COMPANY. WE DO NOT INTEND TO RECAPITULATE THE EVIDENCE, BUT WE WOULD REITERATE SOME OF THE INCIDENTS RECORDED IN THE MINUTES. FOR INSTANCE, WHEN A COMPLAINT WAS MADE ABOUT SUPERVISORS WORKING, SANDERS DEMANDED THE SPECIFICS AS TO TIME AND PLACE. THIS IS HARDLY A TECHNICAL MATTER. IT IS PLAINLY INFORMATION SOUGHT FOR AND ON BEHALF OF MANAGEMENT. WITH RESPECT TO THIS MATTER, RINTOUL, ACCORDING TO THE MINUTES, IDENTIFIED SANDERS AS A BIT PLANT SUPERVISOR WHO, TOGETHER WITH HARSHAW, WAS TO DISCUSS AND RESOLVE THE PROBLEM. THE CONCLUSION IS INESCAPABLE THAT RINTOUL CONSIDERED SANDERS TO BE PART OF MANAGEMENT AND THAT HE HAD AUTHORITY TO RESOLVE THE DISPUTE IN DISCUSSION WITH THE UNION. ONCE AGAIN, WHEN THE MATTER OF SUPERVISORS DOING WORK IN THE PLANT WAS DISCUSSED AT THE APRIL 8TH MEETING, THE MINUTES SAY "SINCE SANDERS WAS ONE OF THOSE NAMED AND PRESENT AT THE MEETING" THE MATTER WAS TAKEN UP. CLEARLY EVERYONE AT THAT MEETING, INCLUDING SANDERS, ACCEPTED AS FACT THAT SANDERS WAS A SUPERVISOR IN THE BIT DEPARTMENT. HIS EXPLANATION OBVIOUSLY WAS THE COMPANY'S EXPLANATION OF THE SITUATION.

20. THESE, TOGETHER WITH OTHER INSTANCES PREVIOUSLY SET OUT IN OUR REVIEW OF THE MINUTES, INDICATE TO US THAT SANDERS WAS, AS THE MINUTES STATE, A PARTICIPANT IN THESE MEETINGS ON BEHALF OF MANAGEMENT AND SPOKE AS PART OF THE MANAGEMENT TEAM. WHEN THERE IS ADDED TO THIS ALL THE EVIDENCE GIVEN BY PARSONS, WE CAN ONLY CONCLUDE ON THE BASIS OF THE TOTALITY OF THE EVIDENCE CONTAINED IN THE REPORT, WHICH INCLUDES, OF COURSE, SANDERS' OWN TESTIMONY, THAT JOHN SANDERS EXERCISES MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND IS EXCLUDED FROM THE BARGAINING UNIT. THE FACT THAT THERE IS NO EVIDENCE CONCERNING THE EXERCISE OF MANAGERIAL FUNCTIONS WITH RESPECT TO EMPLOYEES IN THE BARGAINING UNIT SOUGHT IN THIS APPLICATION IS OF NO CONSEQUENCE IN VIEW OF THE LANGUAGE OF THE ACT.

21. AT THE OUTSET OF THESE PROCEEDINGS THE BOARD HEARD EVIDENCE WITH RESPECT TO ALLEGATIONS CONTAINED IN A LETTER SIGNED BY JANE HIGGINSON, BONNIE AINSWORTH, ANNE KNEGT AND LINDA EARL ALLEGING THAT THEY HAD BEEN MISLED AND INCORRECTLY INFORMED ABOUT THE FACT OF SIGNING A UNION CARD. THIS LETTER IS DATED AFTER THE PETITION. HIGGINSON AND AINSWORTH GAVE TESTIMONY WITH RESPECT TO THIS ASPECT OF THE CASE. IN OUR OPINION, THE EVIDENCE DOES NOT ESTABLISH THAT THE UNION ORGANIZERS DELIBERATELY MISLED THE EMPLOYEES AS TO THE EFFECT OF SIGNING A CARD SO AS TO INVALIDATE THE EVIDENCE OF MEMBERSHIP SET OUT ON THE FACE OF THE CARDS.

22. FOLLOWING THE REPORT OF THE EXAMINER, THE BOARD DETERMINED THAT THE REVISED LIST OF EMPLOYEES COMPRISES 56 NAMES. TO OBTAIN OUTRIGHT CERTIFICATION UNDER THE ACT AS IT THEN WAS, THE APPLICANT NEEDS 31 CARDS. THE REVISED COUNT INDICATES THAT THE APPLICANT HAS FILED 34 GOOD CARDS. HOWEVER, SINCE TEN OF THOSE CARDS BELONG TO PERSONS WHO FILED OBJECTION TO THE APPLICATION IT COULD BE THAT, IF THE PETITIONS WERE FOUND TO BE VALID IN ACCORDANCE WITH THE REQUIREMENTS OF THE BOARD, THE APPLICANT WOULD NOT HAVE SUFFICIENT CARDS FREE FROM DOUBT AS TO THE INTENT OF THE EMPLOYEES CONCERNED TO ENTITLE IT TO OUTRIGHT CERTIFICATION. THE BOARD ACCORDINGLY INQUIRED INTO THE ORIGINATION AND CIRCULATION OF THE PETITIONS AND THE MANNER IN WHICH THE SIGNATURES THERETO WERE OBTAINED.

23. IN A LETTER DATED SEPTEMBER 30, 1970, J. M. SANDERS, WHOM THE BOARD HAS FOUND TO BE PART OF THE MANAGEMENT OF THE RESPONDENT, IDENTIFIED HIMSELF AS BEING THE REPRESENTATIVE OF THE ANTI-UNION MOVEMENT AT BOYLES INDUSTRIES. ENCLOSED WITH THE LETTER WERE A SERIES OF DOCUMENTS. IN THE REPLY OF THE DEPUTY REGISTRAR OF OCTOBER 1ST, 1970, THE RECEIPT OF THESE DOCUMENTS WAS ACKNOWLEDGED. WE FIND IT CONVENIENT TO SET OUT HERE THE RELEVANT PORTIONS OF THE DEPUTY REGISTRAR'S LETTER WHICH ARE AS FOLLOWS:

"RECEIPT IS ACKNOWLEDGED OF YOUR LETTER OF THE 30TH ULTIMO, ENCLOSING THE FOLLOWING DOCUMENTS IN THIS CASE:

- (A) 2 HANDWRITTEN STATEMENTS OF DESIRE, DATED SEPTEMBER 29TH, 1970, EACH OF WHICH BEARS THE SIGNATURE OF 1 PERSON;
- (B) AN UNDATED HANDPRINTED STATEMENT OF DESIRE BEARING THE SIGNATURE OF 1 PERSON;
- (C) AN UNDATED HANDWRITTEN STATEMENT OF DESIRE BEARING THE SIGNATURE OF 1 PERSON;
- (D) 3 UNDATED TYPEWRITTEN STATEMENTS OF DESIRE EACH BEARING THE SIGNATURE OF 1 PERSON;
- (E) 26 UNDATED TYPEWRITTEN STATEMENTS OF DESIRE, WHICH APPEAR TO BE IDENTICAL IN FORM, BEARING IN ALL THE SIGNATURES OF A TOTAL OF 26 PERSONS."

24. WE BELIEVE IT TO BE MOST CONVENIENT TO DEAL FIRST WITH THE 26 DOCUMENTS REFERRED TO IN PARAGRAPH (E). THE TEXT OF ALL OF THESE DOCUMENTS IS AS FOLLOWS:

"DEAR SIR:

I NOTICE FROM AN ANNOUNCEMENT PUBLISHED ON THE EMPLOYEE'S NOTICE BOARD THAT THE UNITED STEEL-WORKERS OF AMERICA HAVE APPLIED FOR THE ESTABLISHMENT OF A UNION TO COVER THE OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF BOYLES INDUSTRIES LIMITED.

BY MEANS OF THIS LETTER I WISH TO RECORD MY OBJECTION TO THIS PROPOSAL AND TO THE ESTABLISHMENT OF THE UNION AS LAID OUT ON THE NOTICE.

YOURS FAITHFULLY,"

25. BEFORE PROCEEDING FURTHER WE SHOULD NOTE THAT MR. FRIDAY, WHO AT THE TIME WAS MANAGER FINANCE AND ADMINISTRATION, TESTIFIED THAT WHILE READING THE NOTICE OF APPLICATION FOR CERTIFICATION ON THE BULLETIN BOARD HE HAD HEARD AN EMPLOYEE ASK IF THERE HAD TO BE A UNION. HE STATED THAT HE REPLIED "IF YOU DO NOT WANT A UNION YOU WILL HAVE TO FIGHT IT." HE STATED THAT THERE WERE SIX TO EIGHT PEOPLE AROUND AT THE TIME THEY WERE DISCUSSING THE NOTICE AND THAT THEY WOULD HAVE OVERHEARD HIS COMMENT. WHEN ASKED AT THE HEARING IF HE HAD SUGGESTED THAT A PETITION BE ORGANIZED, HE SAID THAT HE COULD NOT ANSWER THAT. HE SAID HE COULD NOT DENY THAT HE HAD SAID ANYTHING ABOUT A PETITION. RUBY BRESSO, SENIOR PAYROLL CLERK, TESTIFIED THAT SHE WAS PRESENT AND THAT SHE COULD NOT HEAR ALL OF THE CONVERSATION. SHE DID HEAR MR. FRIDAY SAY HE SUPPOSED THEY WOULD WANT A DAY-OFF TO RUN TO TORONTO AND WONDERED IF THE COMPANY WOULD BE ASKED TO SUPPLY BUSES. SHE STATED THAT AN EMPLOYEE, PETER GEUS WAS PRESENT DURING THE CONVERSATION.

26. THE EVIDENCE IS THAT THE TEXT OF THESE DOCUMENTS WAS COMPOSED BY MR. JOHN SANDERS AND THE EMPLOYEE PETER GEUS. THE LATTER SAID THAT TYPING WAS DONE BY MARY BOYD WHO IS CONFIDENTIAL SECRETARY TO THE VICE-PRESIDENT OF THE COMPANY. AS INDICATED IN THE DEPUTY REGISTRAR'S REPLY, THESE DOCUMENTS ARE IDENTICAL IN FORM AND CONTENT. THE DOCUMENTS WERE DISTRIBUTED THROUGH SANDERS AND GEUS. GEUS TESTIFIED THAT HE GAVE A HALF DOZEN DOCUMENTS TO MARK TESSIER, WHO IS A SUPERVISOR IN MARKETING AND SALES AND REQUESTED HIM TO LEAVE THEM ON THE DESK OF LINDA TRAINOR, SECRETARY TO THE SALES DEPARTMENT. HE STATED THAT MR. TESSIER RETURNED ON DOCUMENT DIRECTLY TO HIM. TWO OF THE DOCUMENTS WERE LEFT BY SOMEONE ON GEUS' DESK. THESE DOCUMENTS AND OTHERS TO WHICH REFERENCE WILL BE MADE SUBSEQUENTLY WERE THEN ENTRUSTED TO SANDERS FOR FORWARDING TO THE BOARD.

27. HAVING ALL OF THE FOREGOING IN MIND WE NOW TURN TO THE REGISTRAR'S LETTER. ITEM (E) REFERS TO TWO HANDWRITTEN STATEMENTS OF DESIRE. ONE OF THESE LETTERS IS SIGNED BY A PERSON WHO DID NOT

JOIN THE UNION AND THEREFORE IS OF NO CONSEQUENCE INsofar AS OVERLAP OF THE PETITION IS CONCERNED. THE LETTER STATES THAT THE EMPLOYEE WAS APPROACHED BY THE UNION DURING OFFICE HOURS AND WAS "BUGGED" AFTER REFUSING TO SIGN. THE SECOND LETTER IS SIGNED BY A PERSON WHO ALSO SIGNED ONE OF THE DOCUMENTS REFERRED TO IN PARAGRAPH (E) OF THE DEPUTY REGISTRAR'S LETTER. THE SIGNATORY REQUESTS WITHDRAWAL OF THE MEMBERSHIP CARD. IT CONSTITUTES AND "OVERLAP". THIS EMPLOYEE ALSO SIGNED THE "FORM" LETTER. BOTH WERE ENCLOSED WITH SANDERS' LETTER.

28. THE DOCUMENT LISTED UNDER (B) DOES NOT CONSTITUTE AN OVERLAP. THE WRITER COMPLAINS OF HAVING BEEN APPROACHED BY THE UNION DURING OFFICE HOURS.

29. THE LETTER LISTED UNDER (C) SIMPLY EXPRESSES OPPOSITION TO THE UNION BUT DOES CONSTITUTE AN OVERLAP.

30. THE ITEMS LISTED UNDER PARAGRAPH (D) ARE IDENTICAL TO THOSE DEALT WITH UNDER PARAGRAPH (E), EXCEPT FOR CERTAIN DELETIONS AND ADDITIONS MADE ON THE FACE OF THE PREPARED LETTER. TWO OF THE PERSONS INVOLVED TESTIFIED BEFORE THE BOARD.

31. ONE DOCUMENT UNDER THIS HEADING IS SIGNED BY JANE HIGGINSON. IT HAS BEEN ALTERED BY STRIKING OUT IN INK PART OF THE FIRST AND SECOND LINE SO THAT THE LETTER COMMENCES WITH THE WORDS "THE UNITED STEELWORKERS OF AMERICA". IT CONCLUDES AS DO THE OTHER FORM PETITIONS AND BEARS THE SIGNATURE OF JANE HIGGINSON. THERE IS ADDED, HOWEVER, BELOW THE SIGNATURE AND BEARING THE DATE SEPTEMBER 29, 1970 THE FOLLOWING:

"I WISH TO MAKE IT KNOWN THAT EVEN THOUGH I HAVE SIGNED THE UNION CARD I WISH TO CANCEL IT. I BELIEVE THAT I HAVE BEEN MISINFORMED WHEN I SIGNED THE CARD. (SNOWBALLED)

MR. MCCORMACK'S LETTER HIT HOME AND I BELIEVE NOW THAT BOYLES CAN DO MORE FOR ME THAN THE UNION."

32. A SECOND DOCUMENT SIGNED BY BONNIE JEAN AINSWORTH IS THE FORM PETITION WITH THE IDENTICAL WORDS STRICKEN OUT AS IN THE HIGGINSON'S DOCUMENT. BESIDE THE SIGNATURE THE FOLLOWING WORDS ARE TYPED. THERE IS NO DATE.

"I WAS UNDER THE IMPRESSION THAT SIGNING A CARD WAS ONLY A PRELIMINARY POLL AND THAT I, OR WE AS A GROUP WOULD BE CONSULTED OR SOLD THE UNION BEFORE IT WAS OR WAS NOT INSTITUTED. MY FEELING NOW IS THAT I AM BEING MANOEUVURED

INTO SOMETHING I DON'T KNOW THAT I WANT AND
FOR THIS REASON I WISH MY VOTE TO BE CANCELLED."

33. THE THIRD DOCUMENT IN THIS GROUP IS AGAIN THE FORM PETITION. THIS ONE HAS NOT BEEN ALTERED EXCEPT FOR THE ADDITION IN HANDWRITING, BENEATH THE SIGNATURE, OF THE WORDS

"I WAS UNDER THE IMPRESSION THE SIGNING OF THE
CARD WAS ONLY A PRELIMINARY POLL."

34. IT IS OUR OPINION THAT THE HAND OF MANAGEMENT IS SO PLAINLY EVIDENT IN THE ORIGATION AND DRAFTING OF THE PETITIONS AND THE MANNER IN WHICH THEY WERE CIRCULATED THROUGHOUT THE OFFICE AND FINALLY PRESENTED TO THE BOARD THAT THEY CANNOT POSSIBLY BE VIEWED AS INDICATIVE OF THE FREE WISHES OF THE EMPLOYEES. THE BOARD THEREFORE FINDS THAT THESE PETITIONS DO NOT SUFFICIENTLY WEAKEN THE EVIDENCE OF MEMBERSHIP FILED BY THE UNION SO AS TO REQUIRE THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE. THIS IS SO EVEN IF FULL EFFECT BE GIVEN TO THE PETITION OF AN EMPLOYEE, JOSEPH LEMMEN, WHICH HE FILED BY HIMSELF. HE APPEARED AND TESTIFIED ON HIS OWN BEHALF.

. . .

36. THE BOARD FURTHER FINDS THAT ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT AT ORILLIA, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, PERSONNEL MANAGER, ONE SECRETARY TO EACH OF THE FOLLOWING: VICE PRESIDENT, COMPTROLLER, PERSONNEL MANAGER AND MANAGER OF THE BIT PLANT, AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE APPLICANT, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

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38. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER H. F. IRWIN: MARCH 3, 1971.

I DISSENT.

HAVING REGARD TO ALL THE CIRCUMSTANCES OF THIS CASE, INCLUDING THE FACT CERTAIN EMPLOYEES IN THE BARGAINING UNIT WROTE TO THE BOARD STATING THAT THEY HAD BEEN MISLED INTO SIGNING APPLICATIONS FOR MEMBERSHIP IN THE APPLICANT UNION AND WISHED TO WITHDRAW SUCH MEMBERSHIP AS IT WAS NOT THEIR INTENTION TO BECOME MEMBERS, I WOULD HAVE DIRECTED THE TAKING OF A REPRESENTATION VOTE. THIS WOULD GIVE THE EMPLOYEES IN THE BARGAINING UNIT AN OPPORTUNITY OF CONFIRMING THEIR MEMBERSHIP IN THE APPLICANT UNION.

18450-70-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. EAST YORK PUBLIC LIBRARY BOARD (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS F. W. MURRAY AND O. HODGES.

APPEARANCES AT THE HEARING: MARTIN LEVINSON AND C. F. KITCHEN FOR THE APPLICANT; W. D. S. MORDEN FOR THE RESPONDENT; NO ONE FOR THE GROUP OF EMPLOYEES.

DECISION OF VICE-CHAIRMAN FRANK V. BOSCARIOL AND BOARD MEMBER O. HODGES:
MARCH 30, 1971.

. . .

2. THE APPLICANT IN SEEKING AN ALL-EMPLOYEE BARGAINING UNIT, REQUESTS THAT THE PROFESSIONAL LIBRARIANS BE INCLUDED IN THE OVERALL UNIT OF THE RESPONDENT'S LIBRARY OPERATIONS. THE RESPONDENT, ON THE OTHER HAND, MAINTAINS THAT NO TRUE COMMUNITY OF INTEREST EXISTS BETWEEN THESE LIBRARIANS AND THE REMAINING CLERICAL EMPLOYEES, AND THAT THEREFORE IT WOULD NOT BE APPROPRIATE TO MELD INTO ONE BARGAINING UNIT, PERSONS WHO PERFORM HERE CLERICAL DUTIES WITH PERSONS OF WHOM NOT ONLY A REAL DEGREE OF CREATIVITY IS EXPECTED BUT WHO PERFORM FUNCTIONS REQUIRING THE EXERCISE OF JUDGMENT, DEEP GENERAL KNOWLEDGE AND SPECIAL SKILLS.

3. ON MARCH 3, 1971, THE BOARD ENTERTAINED REPRESENTATIONS FROM THE PARTIES CONCERNING THE REPORT OF THE EXAMINER DATED JANUARY 5, 1971, IN THIS REGARD.

4. THE ISSUE AS RAISED IN PARAGRAPH #2 WOULD APPEAR TO HAVE NEVER BEEN DIRECTLY RAISED BEFORE THIS BOARD IN THE PAST. AS HAS BEEN STATED BY G. W. REED, Q.C., IN HIS PAPER ENTITLED WHITE-COLLAR BARGAINING UNITS UNDER THE ONTARIO LABOUR RELATIONS ACT (PUBLISHED IN 1969 BY THE INDUSTRIAL RELATIONS CENTRE, QUEEN'S UNIVERSITY - RESEARCH SERIES No. 8), AT P.21 "LIBRARIANS HAVE BEEN INCLUDED IN A UNIT ALONG WITH OTHER LIBRARY STAFF IN SOME PUBLIC LIBRARY CASES WHILE IN OTHERS PROFESSIONAL LIBRARIANS HAVE BEEN EXCLUDED." THUS IN THE HAMILTON PUBLIC LIBRARY BOARD CASE, O.L.R.B., M.R. SEPTEMBER 1964, P.263, PROFESSIONAL LIBRARIANS WERE SPECIFICALLY EXCLUDED FROM THE BARGAINING UNIT OF OFFICE AND CLERICAL STAFF UPON THE AGREEMENT OF THE PARTIES CONCERNED, WHEREAS IN THE ST. THOMAS PUBLIC LIBRARY BOARD CASE O.L.R.B., M.R. APRIL 1965, P.4, THEY WOULD APPEAR TO BE INCLUDED IN THE UNIT ALONG WITH OTHER LIBRARY STAFF. IN THE OSHAWA PUBLIC LIBRARY BOARD CASE, O.L.R.B., M.R. NOVEMBER 1967 AT P.793, THE BOARD, UPON A SECTION 79(2) APPLICATION, REFUSED TO PERMIT THE SCHOOL BOARD FROM REPUDIATING A PRIOR AGREEMENT TO THE EFFECT

THAT LIBRARIANS WERE INCLUDED IN THE ALL-EMPLOYEE UNIT WHERE THERE WAS NO SUBSTANTIAL CHANGE IN THEIR DUTIES AND RESPONSIBILITIES FROM THE DATE OF CERTIFICATION.

5. SOME OF THE USUAL CRITERIA ADOPTED BY THE BOARD IN DETERMINING WHETHER OR NOT THERE EXISTS A COMMUNITY OF INTEREST AMONGST THE VARIOUS CLASSIFICATIONS OF THE EMPLOYER, IS SET OUT IN THE ESSEX HEALTH ASSOCIATION CASE, O.L.R.B., M.R. NOVEMBER 1967, P.716 AT P.719.

6. APPLYING THE FIRST TEST AS THEREIN SET OUT, NAMELY THE CRITERIA BASED UPON THE "NATURE OF THE WORK PERFORMED", TO THE FACTS OF THE INSTANT SITUATION, WE FIND THAT THE LIBRARIANS ARE INITIALLY TRAINED IN THE DUTIES OF THE CLERICALS IN ORDER TO POSSESS THE NECESSARY KNOWLEDGE TO SUPERVISE THEM. UPON COMPLETION OF THIS TRAINING PROGRAM THEY CEASE TO PERFORM ANY FURTHER CLERICAL DUTIES, AND THE LINES OF DEMARCATION BETWEEN THE TWO GROUPS BECOMES DISTINCT AND RATHER CLEARLY DEFINED. THUS THE LIBRARIANS ARE ENGAGED IN SUCH TASKS AS REFERENCE WORK, CATALOGUING CLASSIFICATION, BOOK REVIEWS, BOOK SELECTIONS, PURCHASING, SCHOOL CLASS VISITS, PUBLIC RELATIONS, BOYS AND GIRLS SERVICES, UPDATING MATERIALS AND PROVIDING ADVISORY SERVICES TO READERS. THE CLERICALS, ON THE OTHER HAND, ARE INVOLVED IN REGISTERING BORROWERS, HANDLING OVERDUES, SHELF READING, FILING, TYPING, PROCESSING AND MENDING OF BOOKS, TAKING BOOKS IN AND CHARGING THEM OUT, TOGETHER WITH SOME 30 SMALL DUTIES WHILE EMPLOYED AT THE DESK. THE ONLY DISTINCTIVE OVERLAP OF DUTIES BETWEEN THE TWO GROUPS APPEARS IN THE READING TO THE SCHOOL CHILDREN, WHERE BOTH PARTICIPATE.

7. UNDER THE NEXT HEADING OF "CONDITIONS OF EMPLOYMENT", THE RESPONDENT HAS ACKNOWLEDGED THE FACT THAT BOTH GROUPS, GENERALLY SPEAKING, HAVE SIMILAR WORKING CONDITIONS IN THE AREAS OF VACATIONS, SICK LEAVE, HOURS OF WORK PER WEEK, GROUP LIFE, OMSIP AND OHSIP BENEFITS.

MOREOVER, THE RESPONDENT FURTHER CONCEDES THAT THERE IS LITTLE DIFFERENTIATION BETWEEN THE TWO GROUPS BASED UPON TWO OTHER TESTS APPEARING IN THE ESSEX HEALTH ASSOCIATION CASE (SUPRA) UNDER THE HEADINGS OF "ADMINISTRATION" AND "GEOGRAPHIC CIRCUMSTANCES."

8. DEALING WITH THE "SKILLS OF EMPLOYEES" CRITERIA, WE FIND THAT THE LIBRARIANS DO, IN FACT, EXERCISE SPECIAL SKILLS NOT POSSESSED BY THE CLERICALS. IN THIS REGARD, THE BOARD ALSO NOTES THAT THESE LIBRARIANS HOLD BOTH A BACHELOR OF ARTS DEGREE AND A BACHELOR OF LIBRARY SCIENCE DEGREE FROM A RECOGNIZED UNIVERSITY. BUT THIS CRITERIA HAS BEEN SOMEWHAT QUALIFIED AT PAGE 722 OF THE ABOVE QUOTED DECISION, WHEREIN IT IS STATED:

"ACADEMIC ATTAINMENTS AND THE EXERCISE OF SPECIAL SKILLS ARE NOT SUFFICIENT IN THEMSELVES TO CAUSE THE BOARD TO SEPARATE THE PERSONS WHO EXERCISE SPECIAL SKILLS FROM BARGAINING UNITS WHICH INCLUDE OTHER EMPLOYEES. OF GREATER IMPORTANCE IS THE MANNER IN WHICH THE SKILLS ARE EXERCISED. IF THE SPECIAL SKILLS ARE EXERCISED IN CONJUNCTION WITH PERSONS IN OTHER CLASSIFICATIONS WHO EXERCISE RELATED SKILLS OR AS PART OF A TEAM, WHICH INCLUDES OTHER CLASSIFICATIONS, SUCH INTERDEPENDENCE IS OF GREATER IMPORTANCE THAN THE MERE NATURE OF THE SKILLS."

9. THIS LEADS US DIRECTLY INTO THE FINAL CRITERIA, APPEARING UNDER THE HEADING OF "FUNCTIONAL COHERENCE AND INTERDEPENDENCE". IN THIS REGARD, THE RESPONDENT MAINTAINS THAT ALTHOUGH THE TWO GROUPS WORK TOGETHER, IT IS NOT THE SAME WORK THAT IS BEING PERFORMED. THE APPLICANT, ON THE OTHER HAND, ALLEGES THAT THE TOTAL WORK OF BOTH GROUPS IS SIMILAR AND INTERRELATED. IN SUPPORT OF THIS POSITION, THE BOARD WAS REFERRED TO A NUMBER OF PROCEDURES INDICATING THE FUNCTIONAL COHERENCE OF THE DUTIES OF THE TWO GROUPS. IN THIS REGARD, WE NOTE THE ACTIONS OF THE CLERICAL STAFF, WHO UPON RECEIVING A BOOK WOULD TURN IT OVER TO THE LIBRARIAN WHO, UPON CATALOGUING AND CLASSIFYING IT, WOULD RETURN IT TO THE CLERICAL FOR PROCESSING. THIS IS ALSO REFLECTED IN THE BOOK WITHDRAWAL PROCEDURE WHEREIN ONCE THE LIBRARIANS HAVE DECIDED TO WITHDRAW A BOOK, SUCH INFORMATION IS CONVEYED TO THE CLERICAL WHO THEN PERFORMS THE PHYSICAL WITHDRAWAL. HAVING CAREFULLY REVIEWED ALL OF THE EVIDENCE IN THIS REGARD, WE FIND THAT BOTH GROUPS SHARE A MUTUALITY OF INTEREST IN THE TOTAL WORK OPERATIONS OF THE LIBRARY IN PROVIDING ITS SERVICES TO THE PUBLIC AND, AS SUCH, TOGETHER FORM A RECOGNIZABLE, COMPREHENSIVE AND COHESIVE UNIT.

10. WHILE THERE ARE FACTORS PRESENT IN THE INSTANT SITUATION WHICH WOULD INDICATE THAT A SEPARATE UNIT OF LIBRARIANS MIGHT BE APPROPRIATE AND IN THIS CONNECTION WE REFER TO THE MATTERS AS SET OUT IN PARAGRAPH 6 HEREIN, WE ARE NEVERTHELESS SATISFIED, UPON A REVIEW OF ALL THE RELEVANT CRITERIA, THAT A COMPREHENSIVE UNIT IS APPROPRIATE IN THESE CIRCUMSTANCES.

11. IN ADDITION, DURING THE HEARING OF THIS MATTER, A FURTHER QUESTION WAS RAISED IN RELATION TO THE DESIRES OF THE EMPLOYEES, AND IN PARTICULAR, TO THOSE OF THE LIBRARIANS, AS TO THE APPROPRIATENESS OF THE BARGAINING UNIT. SINCE NO EMPLOYEES ATTENDED THE HEARING FOR PURPOSES OF MAKING REPRESENTATIONS IN THIS REGARD, AND SINCE A SUBSTANTIAL MAJORITY OF THE LIBRARIANS ARE MEMBERS OF THE APPLICANT, WE ADOPT THE REASONING FOUND IN THE BOARD OF HEALTH OF THE YORK-OSHAWA

DISTRICT HEALTH UNIT CASE, O.L.R.B., M.R. JUNE 1969, P.340 AT PAGE 347,
AND THE BOARD WILL "ASSUME THAT THE APPLICANT WHO REPRESENTS A NUMBER
OF THE EMPLOYEES EXPRESSES THE WISHES OF THOSE EMPLOYEES AS THEIR RE-
PRESENTATIVE AT THE HEARING."

12. HAVING CAREFULLY CONSIDERED ALL OF THE EVIDENCE IN THIS CASE
AND APPLYING THE PRINCIPLES AS SET OUT ABOVE, TOGETHER WITH THE BOARD'S
WELL-KNOWN AVERSION TO THE FRAGMENTATION OF APPROPRIATE BARGAINING
UNITS (AS DESCRIBED IN THE CORPORATION OF THE TOWNSHIP OF MARKHAM CASE,
O.L.R.B., M.R. AUGUST 1969, P. 592 AT P.594), THE BOARD FINDS THAT ALL
EMPLOYEES OF THE RESPONDENT IN THE BOROUGH OF EAST YORK, SAVE AND EX-
CEPT CHIEF LIBRARIAN, PERSONS ABOVE THE RANK OF CHIEF LIBRARIAN, AS-
SISTANT CHIEF LIBRARIAN, LIBRARIANS IN CHARGE OF BRANCHES AND PERSONS
REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, CONSTITUTE A
UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BAR-
GAINING.

. . .

17. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER F. W. MURRAY: MARCH 30, 1971.

1. I DISSENT.

2. I WOULD FIND THAT THE PROFESSIONAL LIBRARIANS SHOULD BE EX-
CLUDED FROM THE BARGAINING UNIT.

3. AS OUTLINED IN THE BOARD'S DECISION, THE HAMILTON PUBLIC
LIBRARY BOARD AND THE ST. THOMAS PUBLIC LIBRARY BOARD, IN ONE CASE
EXCLUDED AND IN THE SECOND CASE INCLUDED, THE PROFESSIONAL LIBRARIANS
IN THE BARGAINING UNIT. HOWEVER, IT WOULD APPEAR THAT IN BOTH OF
THESE CASES THE DECISION WAS BASED UPON THE AGREEMENT OF THE PARTIES.
THE OSHAWA PUBLIC LIBRARY BOARD CASE WAS A SPECIAL CASE AND INVOLVED
A PRIOR AGREEMENT IN WHICH THE PROFESSIONAL LIBRARIANS HAD BEEN IN-
CLUDED IN AN ALL-EMPLOYEE UNIT.

4. REFERRING FURTHER TO THESE CASES, THE HAMILTON PUBLIC LI-
BRARY BOARD CASE, IN WHICH THE PROFESSIONAL LIBRARIANS WERE EXCLUDED,
INVOLVED A LARGE MULTIPLE LOCATION LIBRARY UNIT, MUCH THE SAME AS WE
HAVE IN THE INSTANT CASE. THE ST. THOMAS LIBRARY BOARD CASE INVOLVED
A ONE LOCATION UNIT AND IS NOT NECESSARILY COMPARABLE TO A CASE WHERE
THERE ARE A NUMBER OF LIBRARIANS EMPLOYED.

5. A PREVIOUS DECISION INVOLVING THE UNIVERSITY OF TORONTO LI-
BRARIES IS ALSO COMPARABLE TO THE INSTANT CASE (THE GOVERNORS OF THE
UNIVERSITY OF TORONTO, O. L. R. B., M.R. FEBRUARY 1969, PAGE 1149)

AND THAT WHILE ALBEIT IT IS NOT A PUBLIC LIBRARY, A LARGE STAFF OF BOTH CLERICAL, NON-PROFESSIONAL AND PROFESSIONAL LIBRARIANS WERE INVOLVED AT MULTIPLE LOCATIONS. HERE AGAIN THOUGH IT WAS ON AGREEMENT OF THE PARTIES THAT THE BOARD EXCLUDED PROFESSIONAL LIBRARIANS, IN THAT CASE, THE APPLICANT, WHICH IS THE SAME APPLICANT AS IN THE INSTANT CASE, SOUGHT BARGAINING RIGHTS EXCLUDING PROFESSIONAL LIBRARIANS AND THE RESPONDENT IN TURN AGREED WITH THE DESCRIPTION OF THE UNIT SUBMITTED BY THE APPLICANT. IN DESCRIBING THE UNIT IN THE UNIVERSITY OF TORONTO CASE IT WAS DESCRIBED AS "ALL NON-PROFESSIONAL EMPLOYEES OF THE UNIVERSITY OF TORONTO LIBRARIES" ETC.

6. THERE IS NO QUESTION THAT THERE IS A SUBSTANTIAL DIFFERENCE IN "THE NATURE OF THE WORK PERFORMED" BY THE PROFESSIONAL LIBRARIANS AND THE NON-PROFESSIONAL LIBRARIANS, CLERICAL AND CARETAKING EMPLOYEES.

7. WITH RESPECT TO THE CONDITIONS OF EMPLOYMENT, WHILE IT IS TRUE THE RESPONDENT ACKNOWLEDGED THE FACT THAT BOTH GROUPS GENERALLY SPEAKING HAD SIMILAR WORKING CONDITIONS, THE EXAMINER'S REPORT CLEARLY INDICATED THAT THERE WAS SOME DIFFERENCE WITH RESPECT TO THE CONTROL AND SUPERVISION OF THE HOURS OF WORK PERFORMED BY THE PROFESSIONAL LIBRARIANS, AS OPPOSED TO THOSE EMPLOYEES IN THE BALANCE OF THE BARGAINING UNIT. IN MY OPINION THIS IS AN IMPORTANT DIFFERENCE AND ONE THAT SHOULD NOT BE IGNORED BY THE BOARD.

8. WITH RESPECT TO THE ADMINISTRATION AND GEOGRAPHIC CIRCUMSTANCES, IT IS QUITE CLEAR THERE IS LITTLE DIFFERENCE IN THAT BOTH ARE EMPLOYED BY THE LIBRARY BOARD AND UNDER THE GENERAL SUPERVISION OF THE CHIEF LIBRARIAN THROUGH THE LIBRARIANS IN CHARGE OF BRANCHES, AND LITTLE OR NO EVIDENCE WAS ADDUCED CONCERNING THE SPECIFIC WORK LOCATIONS, OTHER THAN THE BOARD CAN ASSUME THAT THE COMPLETE UNIT IS CONTAINED IN THE LIBRARY BUILDINGS OPERATED BY THE EAST YORK LIBRARY BOARD.

9. WITH RESPECT TO THE SKILLS OF EMPLOYEES, I FIND THAT THERE IS A SUBSTANTIAL DIFFERENCE, AND INDEED THE ACADEMIC QUALIFICATIONS ARE QUITE DIFFERENT.

10. THE STATEMENT MADE IN THE ESSEX HEALTH ASSOCIATION CASE CONCERNING THE QUESTION OF THE IMPORTANCE GIVEN TO THE SKILLS IS WHERE I HAVE A SIGNIFICANT DIFFERENCE WITH MY COLLEAGUES ON THE BOARD, PARTICULARLY WITH RESPECT TO THE INTERPRETATION GIVEN TO THE LAST SENTENCE, WHICH WHILE QUOTED IN THE AWARD, MAY BE HELPFUL TO REPEAT HERE.

"IF THE SPECIAL SKILLS ARE EXERCISED IN CONJUNCTION WITH PERSONS IN OTHER CLASSIFICATIONS WHO EXERCISE RELATED SKILLS, OR

AS PART OF A TEAM, WHICH INCLUDES OTHER CLASSIFICATIONS, SUCH INTER-DEPENDENCE IS OF GREATER IMPORTANCE THAN THE MERE NATURE OF THE SKILLS."

THE EVIDENCE WOULD INDICATE THAT THERE ARE FEW RELATED SKILLS IN THAT THE PROFESSIONAL LIBRARIANS ARE REQUIRED TO READ, CLASSIFY AND CATALOGUE MATERIAL WHICH, IN MY OPINION, ARE NOT RELATED TO THE SKILLS REQUIRED FOR THE CLERICAL DUTIES OF FILING, WITHDRAWAL CARDS, COLLECTION OF OVERDUES, THE PLACING OF BOOKS ON SHELVES, ETC. THE SKILLS ARE ONLY RELATED IN THAT THEY ARE PART OF THE WORK REQUIRED IN THE PROCESS OF RUNNING A LIBRARY SERVICE TO A COMMUNITY. THE PROFESSIONAL LIBRARIANS ARE CLEARLY REQUIRED IN THEIR READING DUTIES TO HAVE A HIGH DEGREE OF READING SKILLS AND ABSORPTION AND TO MAKE INDEPENDENT JUDGMENTS WITH RESPECT TO THE CLASSIFYING AND CATALOGUING OF THE MATERIAL. MOREOVER, THE DUTIES OF THE PROFESSIONAL LIBRARIAN AS TO THE PURCHASE OF BOOKS, THE NUMBER REQUIRED, PREPARATION OF BOOK REVIEWS, ETC. ALL ALSO REQUIRE THE EXERCISING OF INDEPENDENT JUDGMENT, AND THE SKILLS REQUIRED ARE NOT, IN MY OPINION, RELATED TO THOSE REQUIRED OF THE CLERICAL AND CARETAKING STAFF.

12. THE QUESTION OF FUNCTIONAL COHERENCE AND INTERDEPENDENCE MUST ALSO IN MY OPINION BE VIEWED WITH LESSER IMPORTANCE THAN THE TWO OTHER ELEMENTS, NAMELY THE NATURE OF THE WORK PERFORMED, AND THE SKILLS REQUIRED, FOR OBVIOUSLY IN ANY OPERATION, WHETHER IT BE THE MANUFACTURE OF A PRODUCT OR THE PROVIDING OF A SERVICE, WE CAN ALWAYS FIND A FUNCTIONAL COHERENCE AND INTER-DEPENDENCE. IF FUNCTIONAL COHERENCE AND INTER-DEPENDENCE WERE TO BE RELIED UPON AS BEING MORE IMPORTANT THAN THE NATURE OF THE WORK AND SKILLS REQUIRED, WE COULD THEN CONCLUDE THAT AN AERONAUTICAL ENGINEER SHOULD BE IN THE SAME BARGAINING UNIT AS A FILING CLERK WORKING IN THE SAME OFFICE, OR A SURGEON IN THE OPERATING ROOM IN THE SAME UNIT AS THE CLEANING STAFF REQUIRED TO CLEAN THE OPERATING ROOM. THE BOARD'S GENERAL PRACTICE WITH RESPECT TO A SERVICE INDUSTRY IS TO SEPARATE SALES FROM PROCESSING, AND, DESPITE THE RISK OF FRAGMENTATION, THE BOARD WILL FOR EXAMPLE, IN A CLEANING AND PRESSING ESTABLISHMENT, SEPARATE THE EMPLOYEES IN THE CLEANING AND PRESSING OPERATION FROM THOSE EMPLOYEES WHO DEAL WITH THE CUSTOMERS, YET THE BOARD COULD FIND A GREAT DEAL OF FUNCTIONAL COHERENCE AND INTER-DEPENDENCE BETWEEN THESE TWO GROUPS. INDEED, ONE GROUP COULD NOT EXIST WITHOUT THE OTHER.

13. IT IS MY OPINION THAT THE MOST IMPORTANT CRITERIA OF ALL OF THOSE OUTLINED IN THE ESSEX HEALTH ASSOCIATION CASE IS THE NATURE OF THE WORK PERFORMED AND THE SKILLS REQUIRED BY THE EMPLOYEES. IN MY OPINION, THERE IS SUFFICIENT DIFFERENCE IN THE NATURE OF THE WORK PERFORMED AND THE SKILLS REQUIRED SO AS TO FIND THAT THERE IS NO MUTUALITY OF INTERESTS BETWEEN THE PROFESSIONAL LIBRARIANS AND THOSE IN THE BALANCE OF THE BARGAINING UNIT.

14. I WOULD HAVE FOUND THAT ALL NON-PROFESSIONAL EMPLOYEES OF THE RESPONDENT IN THE BOROUGH OF EAST YORK, SAVE AND EXCEPT EMPLOYEES IN CHARGE OF BRANCHES AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK, CONSTITUTED A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

18591-70-R: INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (APPLICANT) v. YORK UNIVERSITY (RESPONDENT) v. CANADIAN UNION OF PUBLIC EMPLOYEES (INTERVENER).

- AND -

18598-70-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. YORK UNIVERSITY (RESPONDENT) v. INTERNATIONAL UNION UNITED PLANT GUARD WORKERS OF AMERICA LOCAL 1962 (INTERVENER #1) v. INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (INTERVENER #2).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND H.F. IRWIN.

DECISION OF THE BOARD: MARCH 1, 1971.

1. THIS CASE INVOLVES A CONTEST BETWEEN THE TWO APPLICANT UNIONS WITH RESPECT TO PERSONS EMPLOYED BY THE RESPONDENT WHO ARE SKILLED TRADESMEN. THE APPLICANT, THE CANADIAN UNION OF PUBLIC EMPLOYEES (HEREINAFTER REFERRED TO AS CUPE), SEEKS TO REPRESENT A COMPREHENSIVE UNIT OF EMPLOYEES WHO ARE ENGAGED IN MAINTAINING AND CARING FOR THE GROUNDS AND BUILDINGS AT THE RESPONDENT UNIVERSITY. THIS COMPREHENSIVE UNIT OF EMPLOYEES TOTALS APPROXIMATELY 250 PERSONS. THE APPLICANT, THE INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (HEREINAFTER REFERRED TO AS IUOE), SEEKS TO BOTH SEVER AND TO REPRESENT APPROXIMATELY 18 OF THOSE EMPLOYEES WHO ARE SKILLED TRADESMEN, AND THE BOARD IS REQUIRED TO DETERMINE WHETHER IT WILL SEVER THOSE 18 EMPLOYEES FROM THE COMPREHENSIVE UNIT AND CREATE TWO SEPARATE BARGAINING UNITS - ONE REPRESENTED BY CUPE AND ANOTHER REPRESENTED BY THE IUOE.

2. AS WE INDICATED ALL THE EMPLOYEES ARE CONCERNED WITH VARIOUS ASPECTS OF THE CARE AND MAINTENANCE OF YORK UNIVERSITY GROUNDS AND PREMISES. THE MAJORITY OF THE EMPLOYEES ARE ENGAGED AS CLEANERS, MAIDS, CARETAKERS AND GROUNDSMEN AND THEY WORK IN DIFFERENT AREAS OF THE UNIVERSITY. THE SKILLED TRADESMEN INCLUDE PLUMBERS, MAINTENANCE MECHANICS, GENERAL MAINTENANCE EMPLOYEES, CABINET MAKERS, LOCKSMITHS AND ELECTRICIANS, AND THEY WORK OUT OF THE MAINTENANCE OR WORK SHOP AREA IN A SEPARATE BUILDING AT THE YORK UNIVERSITY CAMPUS. AS WELL, OTHER MAINTENANCE PERSONNEL WORK IN SEPARATE AREAS IN THE SAME BUILDING. THE SKILLED TRADESMEN WORK A FORTY HOUR WEEK ON THE DAY SHIFT AND ARE PAID IN ACCORDANCE WITH THEIR RESPECTIVE TRADES. THEY ARE HOURLY RATED BUT THERE IS NO SEPARATE PAYROLL FOR THEM. THEY ARE

SUPERVISED BY THREE SEPARATE SUPERVISORS - A TRADE SUPERVISOR (MECHANICAL), A TRADE SUPERVISOR (STRUCTURAL) AND A TRADE SUPERVISOR (ELECTRICAL). UNDER THE MECHANICAL SUPERVISOR THERE ARE THREE PLUMBERS, TWO CONT. MECHANICS, THREE GENERAL MAINTENANCE EMPLOYEES AND ONE MECHANICAL MAINTENANCE EMPLOYEE. UNDER THE STRUCTURAL SUPERVISOR THERE ARE TWO CABINET MAKERS, TWO LOCKSMITHS AND A GENERAL MAINTENANCE EMPLOYEE, AND UNDER THE ELECTRICAL SUPERVISOR THERE ARE THREE ELECTRICIANS. THESE THREE SUPERVISORS REPORT TO THE SUPERINTENDENT OF MAINTENANCE. THE REMAINING EMPLOYEES HAVE SEPARATE SUPERVISION AND THE CARETAKERS ULTIMATELY REPORT TO THE SUPERINTENDENT OF CARETAKING SERVICES WHILE THE GROUNDS PEOPLE ULTIMATELY REPORT TO THE SUPERINTENDENT OF GROUNDS. MR. D. A. DAWSON, WHO IS THE ASSISTANT DIRECTOR OF OPERATIONS AND ENGINEERING, IS THE OVERALL DIRECTOR FOR ALL EMPLOYEES INCLUDING THE SKILLED TRADESMEN. ALL THESE SKILLED TRADESMEN HAD PREVIOUSLY BEEN REPRESENTED IN ONE BARGAINING UNIT BY THE SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 204 BUT THOSE BARGAINING RIGHTS WERE TERMINATED ON JUNE 29, 1970 AS A RESULT OF A TERMINATION APPLICATION TO THIS BOARD. SEE WALTER ZAMPOLIN ET AL V. SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 204 V. YORK UNIVERSITY V. GROUP OF EMPLOYEES, BOARD FILE #17754-70-R, JUNE 1970 (UNREPORTED).

3. THE IUOE CLAIMS THAT IT IS ENTITLED TO REPRESENT THESE SKILLED TRADESMEN AS A CRAFT BARGAINING UNIT PURSUANT TO SECTION 6(2) OF THE LABOUR RELATIONS ACT. THAT SECTION PROVIDES:

6.-(2) ANY GROUP OF EMPLOYEES WHO EXERCISE TECHNICAL SKILLS OR WHO ARE MEMBERS OF A CRAFT BY REASON OF WHICH THEY ARE DISTINGUISHABLE FROM THE OTHER EMPLOYEES AND COMMONLY BARGAIN SEPARATELY AND APART FROM OTHER EMPLOYEES THROUGH A TRADE UNION THAT ACCORDING TO ESTABLISHED TRADE UNION PRACTICE PERTAINS TO SUCH SKILLS OR CRAFT SHALL BE DEEMED BY THE BOARD TO BE A UNIT APPROPRIATE FOR COLLECTIVE BARGAINING IF THE APPLICATION IS MADE BY A TRADE UNION PERTAINING TO SUCH SKILLS OR CRAFT, AND THE BOARD MAY INCLUDE IN SUCH UNIT PERSONS WHO ACCORDING TO ESTABLISHED TRADE UNION PRACTICE ARE COMMONLY ASSOCIATED IN THEIR WORK AND BARGAINING WITH SUCH GROUP, BUT THE BOARD SHALL NOT BE REQUIRED TO APPLY THIS SUBSECTION WHERE THE GROUP OF EMPLOYEES IS INCLUDED IN A BARGAINING UNIT REPRESENTED BY ANOTHER BARGAINING AGENT AT THE TIME THE APPLICATION IS MADE.

4. IN ORDER TO SUCCEED THE IUOE MUST SATISFY THE FOLLOWING TESTS:

- (1) WHETHER THE EMPLOYEES WHOM THE APPLICANT CLAIMS TO REPRESENT ARE EMPLOYEES WHO EXERCISE TECHNICAL SKILLS OR WHO ARE MEMBERS OF A CRAFT BY REASON OF WHICH THEY ARE DISTINGUISHABLE FROM OTHER EMPLOYEES;
- (2) WHETHER THESE EMPLOYEES COMMONLY BARGAIN SEPARATELY AND APART FROM OTHER EMPLOYEES THROUGH A TRADE UNION THAT ACCORDING TO ESTABLISHED TRADE UNION PRACTICE PERTAINS TO SUCH SKILLS OR CRAFT;
- (3) WHETHER THE APPLICATION IS MADE BY A TRADE UNION PERTAINING TO SUCH SKILLS OR CRAFT.

5. THE EVIDENCE FILED IN THIS CASE DOES NOT CONSTITUTE SUFFICIENT EVIDENCE THAT THESE SKILLED TRADESMEN COMMONLY BARGAIN SEPARATE AND APART FROM OTHER EMPLOYEES EITHER THROUGH THE APPLICANT OR THROUGH ANOTHER TRADE UNION THAT ACCORDING TO ESTABLISHED TRADE UNION PRACTICE PERTAINS TO SUCH SKILLS OR CRAFT. THE EVIDENCE INDICATES THAT IN CERTAIN LIMITED CIRCUMSTANCES THE APPLICANT HAS BARGAINED ON BEHALF OF PERSONS IN SOME OF THE TRADES BUT IT ALSO APPEARS THAT THIS BARGAINING HAS OCCURRED IN BARGAINING UNITS COMPRISING OTHER EMPLOYEES WITH VARYING CLASSIFICATIONS. THIS GROUP THAT THE APPLICANT SEEKS TO SEVER IS COMPOSED OF EMPLOYEES WITH DIFFERENT SKILLS AND THERE IS NO EVIDENCE OF ANY LIKE OR SIMILAR HETEROGENEOUS BARGAINING UNITS THAT HAVE BARGAINED SEPARATE AND APART. IT IS TRITE TO SAY THAT THERE HAVE BEEN CERTIFICATES GRANTED TO UNITS COMPOSED OF PLUMBERS, REPRESENTED BY THE PLUMBERS CRAFT UNION, AND THE SAME HAS OCCURRED WITH ELECTRICIANS AND CARPENTERS, BUT THERE IS NO EVIDENCE TO INDICATE A PATTERN OF BARGAINING WHICH IS SUGGESTED BY THE IUOE.

6. IN THE INT'L. UNION OF OPERATING ENGINEERS, LOCAL 700 AND FIRESTONE TIRE & RUBBER CO. AND UNITED RUBBER WORKERS, LOCAL 113, 1963 OLRB MTHLY. REP., 491 A SIMILAR SITUATION OCCURRED. THE APPLICANT SOUGHT A CRAFT UNIT OF MAINTENANCE ELECTRICIANS IN A MANUFACTURING PLANT. THE BOARD STATED:

"HOWEVER, IN MANUFACTURING IN GENERAL, IT IS THE RARE EXCEPTION RATHER THAN THE RULE FOR THE BOARD TO DETERMINE THAT ANY CLASSIFICATION OF MAINTENANCE MECHANICS CONSTITUTES A CRAFT UNIT, THE REASON BEING THAT THE SEVERAL CRAFT UNIONS THAT HAVE APPLIED FOR CERTIFICATION FOR SUCH UNITS HAVE RARELY SUCCEEDED IN

SHOWING THAT ACCORDING TO ESTABLISHED TRADE UNION PRACTICE THEY COMMONLY BARGAIN FOR THE RESPECTIVE CLASSIFICATIONS IN THE MAINTENANCE DEPARTMENT SEPARATELY AND APART FROM OTHER EMPLOYEES. ON THE BASIS OF THE PRINCIPLES THAT THE BOARD HAS APPLIED IN PAST IN CASES OF THIS NATURE, AND HAVING REGARD TO THE EVIDENCE ADDUCED IN THIS CASE, WE FIND THAT THE APPLICANT FAILED TO SHOW THAT ANY UNION PERTAINING TO THE CRAFT OF ELECTRICIANS COMMONLY BARGAINS FOR MAINTENANCE ELECTRICIANS IN CIRCUMSTANCES SUCH AS THOSE DISCLOSED IN THIS APPLICATION."

AGAIN, AT THE UNIVERSITIES IN GENERAL, THERE IS NO EVIDENCE TO SUPPORT THE IUOE'S POSITION THAT A HETEROGENEOUS GROUP SUCH AS THE GROUP IT SEEKS TO REPRESENT IN THIS CASE HAS BEEN FOUND BY THIS BOARD TO CONSTITUTE A CRAFT UNIT.

7. EVEN IF WE WERE TO ASSUME THAT THE IUOE CAN SHOW THAT THESE EMPLOYEES COMMONLY BARGAIN SEPARATELY AND APART, THERE IS NO EVIDENCE THAT THE IUOE PERTAINS TO THE SKILL OR CRAFT OF MAINTENANCE ELECTRICIANS, MAINTENANCE PLUMBERS OR MAINTENANCE CARPENTERS. THIS MATTER WAS ALSO DEALT WITH IN THE FIRESTONE TIRE & RUBBER CO. CASE SUPRA. IN THAT CASE THE BOARD SAID:

"IN SO FAR AS THE THIRD CONDITION IS CONCERNED, COUNSEL FOR THE APPLICANT CONTENDED THAT THE INTERNATIONAL UNION OF OPERATING ENGINEERS AND ITS LOCALS PERTAINS TO THE SKILL OR CRAFT OF MAINTENANCE ELECTRICIANS. IN THIS CONNECTION HE TOLD US THAT HE WAS RELYING ON THE DICTIONARY MEANING OF THE WORD "PERTAINING", WHICH SPEAKS IN TERMS OF "BELONGING TO" OR BEING "ASSOCIATED WITH", THAT THE ELECTRICIANS WERE CLOSELY ASSOCIATED WITH THE STATIONARY AND HOISTING ENGINEERS AND THAT, BY VIRTUE OF SUCH ASSOCIATION, THEY WERE INCLUDED IN A NUMBER OF BARGAINING UNITS FOR WHICH THE INTERNATIONAL UNION OF OPERATING ENGINEERS OR ITS LOCALS WERE THE BARGAINING AGENTS. IF THE WORD "PERTAINING" WERE GIVEN SUCH BROAD MEANING, IT WOULD FOLLOW THAT ANY TRADE UNION, WHICH COULD SHOW THAT IT INCLUDED ELECTRICIANS IN ITS MEMBERSHIP AND THAT ELECTRICIANS WERE INCLUDED IN BARGAINING UNITS FOR WHICH IT BARGAINED, WOULD BE ABLE TO CLAIM CRAFT RIGHTS UNDER THE PROVISIONS OF SUBSECTION 2 OF SECTION 6. IF THIS INTERPRETATION OF THE SUBSECTION WERE ADOPTED, INDUSTRIAL UNIONS, ALMOST WITH-

OUT EXCEPTION, WOULD BE ABLE TO FRAGMENTIZE EVERY INDUSTRIAL OR COMMERCIAL UNDERTAKING IN WHICH CRAFTSMEN WERE EMPLOYED AND TO ORGANIZE AND BE CERTIFIED FOR ONE CRAFT AT A TIME. SUCH AN APPROACH TO SUBSECTION 2 OF SECTION 6 WOULD BE SO FOREIGN TO THE HISTORY AND PRACTICES OF COLLECTIVE BARGAINING IN THIS PROVINCE DURING THE LAST TWO DECADES THAT IT WOULD REQUIRE THE CLEAREST LANGUAGE IN THE SUBSECTION TO CONVINCE US THAT THAT IS WHAT THE LEGISLATURE INTENDED. IN OUR OPINION, THE WORD "PERTAINING" MUST BE GIVEN A MORE RESTRICTED MEANING. THE MEANING WHICH COMMENDS ITSELF TO US APPEARS IN THE SHORTER OXFORD DICTIONARY AND IT IS "TO BE APPROPRIATE TO". THAT INDEED IS THE PRINCIPLE THAT HAS BEEN FOLLOWED BY THE BOARD SINCE THE PRESENT ACT CAME INTO EFFECT IN INTERPRETING AND APPLYING THIS SUBSECTION. IN THAT SENSE, THE INTERNATIONAL UNION OF OPERATING ENGINEERS AND ITS LOCALS ARE NOT TRADE UNIONS PERTAINING TO THE SKILL OR CRAFT OF MAINTENANCE ELECTRICIANS."

THE SAME SITUATION EXISTS IN THIS CASE. WHILE THE IUOE HAS REPRESENTED PERSONS WITH THE SAME TRADE IN OTHER BARGAINING UNITS WE ARE OF THE OPINION THAT FOR THE REASONS GIVEN IN THE FIRESTONE TIRE & RUBBER Co. CASE THAT THIS TYPE OF REPRESENTATION DOES NOT ENTITLE THE IUOE TO CLAIM CRAFT RIGHTS UNDER THE PRINCIPLES OF SECTION 6(2) OF THE LABOUR RELATIONS ACT FOR THE SKILLED TRADESMEN IN THIS CASE.

8. FOR ALL THESE REASONS THE APPLICATION BY THE IUOE IS DISMISSED.

9. HAVING REGARD TO THE SUBMISSIONS OF THE PARTIES AND TO THE REPORT OF THE EXAMINER DATED JANUARY 5, 1971 THE BOARD FINDS THAT ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN MAINTENANCE, SERVICES, AND PLANT OPERATIONS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, PERSONS COVERED BY A COLLECTIVE AGREEMENT BETWEEN INTERVENER #1 AND THE RESPONDENT AND PERSONS COVERED BY A COLLECTIVE AGREEMENT BETWEEN INTERVENER #2 AND THE RESPONDENT, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

10. FOR THE PURPOSE OF CLARITY THE BOARD NOTES THE AGREEMENT OF THE PARTIES AS FOLLOWS:

- (A) THAT THE PARKING CONTROL OFFICER IS NOT INCLUDED IN THE BARGAINING UNIT;
- (B) THAT PERSONS CLASSIFIED AS SUPERVISORS IN THE MAINTENANCE DEPARTMENT AND PERSONS CLASSIFIED AS GROUNDS FOREMEN IN THE GROUNDS DEPARTMENT EXERCISE MANAGERIAL FUNCTIONS AND ARE NOT INCLUDED IN THE BARGAINING UNIT;
- (C) THAT MR. R. WITTY EXERCISES MANAGERIAL FUNCTIONS AND IS NOT INCLUDED IN THE BARGAINING UNIT.

11. HAVING REGARD TO THE REPORT OF THE EXAMINER, DATED JANUARY 5, 1971, THE BOARD FINDS THAT MR. GORDON WISDOM, CARETAKER FOREMAN, AND ALL PERSONS IN THE SAME CLASSIFICATION AS MR. WISDOM, EXERCISE MANAGERIAL FUNCTIONS AND ARE NOT INCLUDED IN THE BARGAINING UNIT.

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13. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

18682-70-R: NORTHERN ELECTRIC EMPLOYEES ASSOCIATION (APPLICANT) V. MICROSYSTEMS INTERNATIONAL LIMITED (RESPONDENT) V. THE TECHNICAL EMPLOYEES ASSOCIATION OF MICROSYSTEMS INTERNATIONAL LIMITED (INTERVENER #1) V. INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (INTERVENER #2) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND H.F. IRWIN.

APPEARANCES AT THE HEARING: ROBERT P. ARMSTRONG AND G.P. MEEHAN FOR THE APPLICANT; NO ONE APPEARING FOR THE RESPONDENT; NO ONE APPEARING FOR INTERVENER #1 OR INTERVENER #2; DUNCAN C. FRASER FOR THE GROUP OF EMPLOYEES.

DECISION OF THE BOARD: MARCH 1, 1971.

1. IN THIS MATTER THERE WAS AN OBJECTION TO THE CONDUCT OF THE VOTE. CERTAIN EMPLOYEES PROTESTED THAT THE 72 HOUR SILENT PERIOD WAS INFRINGED BY THE APPLICANT BECAUSE THEY FAILED TO REMOVE THEIR PROPAGANDA NOTICES FROM THE PLANT BULLETIN BOARD UNTIL 7:05 A.M. ON FRIDAY, JANUARY 8, 1971.

2. IN THIS CASE POSTERS WERE PUT UP ON MONDAY, JANUARY 4TH IN ANTICIPATION OF THE VOTE WHICH TOOK PLACE ON MONDAY, JANUARY 11, 1971. THE SILENT PERIOD COMMENCED ON THURSDAY, JANUARY 7TH AT 12:01 A.M. AND REPRESENTATIVES OF THE APPLICANT REMOVED THE POSTERS WHEN THEY REPORTED FOR THE MORNING SHIFT AT APPROXIMATELY 7:00 A.M. ON JANUARY 8TH. THE POSTERS SIMPLY STATED: "VOTE ASSOCIATION" IN BOTH ENGLISH AND FRENCH. THE APPLICANT UNION HAD ADVISED THE PERSONS INVOLVED WITH THE VOTE THAT THERE SHOULD BE NO PROPAGANDA DURING THE 72 HOUR PERIOD.

3. IN THE INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT, AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW-CIO), AND KELVINATOR OF CANADA LIMITED, AND KELVINATOR WORKERS ASSOCIATION, CLLC, 1430 A SIMILAR SITUATION OCCURRED. THE PROPAGANDA NOTICES WERE POSTED ON THE COMPANY'S BULLETIN BOARD WITH THE COMPANY'S CONSENT BUT ONE NOTICE REMAINED POSTED DURING THE NO PROPAGANDA PERIOD. THERE WAS EVIDENCE THAT THE NOTICE WAS IN FACT REMOVED AND SUBSEQUENTLY RE-APPEARED ON THE DAY PRIOR TO THE VOTE, BUT WAS REMOVED BY AN OFFICER OF THE UNION WHEN HE SAW THE NOTICE POSTED. IN ADDITION, THERE WERE OTHER ACTIONS COMPLAINED OF IN THAT CASE. THE BOARD CONCLUDED THAT IN THE CIRCUMSTANCES THERE WAS NO TENDENCY OF THE CONDUCT COMPLAINED OF "SUCH AS WOULD REASONABLY PRECLUDE A FREE EXPRESSION BY SECRET BALLOT". WHILE THE BOARD IN THAT CASE DID NOT DEAL SPECIFICALLY WITH THE POSTER ON THE BULLETIN BOARD, IT IS IMPLICIT IN READING BOTH THE MAJORITY AND DISSENTING DECISION THAT THE BOARD CONSIDERED THE EFFECT OF THE POSTER ON THE BULLETIN BOARD.

4. ACCORDINGLY, HAVING REGARD TO THE EVIDENCE IN THIS CASE AND TO THE DECISION OF THE BOARD IN THE KELVINATOR OF CANADA LIMITED CASE SUPRA, WE ARE OF THE OPINION THAT THE CONDUCT COMPLAINED OF DID NOT PRECLUDE THE EMPLOYEES FROM EXERCISING THEIR TRUE WISHES WHEN THEY CAST THEIR BALLOTS. ACCORDINGLY THE OBJECTION TO THE VOTE IS DENIED.

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6. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

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18695-70-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 2486 (APPLICANT) V. ROY CONSTRUCTION (NORTH BAY) LTD. (RESPONDENT).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

DECISION OF THE BOARD:

MARCH 4, 1971.

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4. THE BOARD FURTHER FINDS THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 92 OF THE LABOUR RELATIONS ACT.

5. THE BOARD FURTHER FINDS THAT ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A FIFTY MILE RADIUS OF THE TIMMINS FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND SHOP EMPLOYEES, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

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7. AT THE MEETINGS CONDUCTED BY THE EXAMINER, THE APPLICANT CHALLENGED THE INCLUSION OF TEN PERSONS ON THE SCHEDULE A FILED BY THE RESPONDENT. BASED ON THE EVIDENCE CONTAINED IN THE REPORTS OF THE EXAMINER, THE BOARD FINDS THAT NINE OF THE TEN PERSONS CHALLENGED BY THE APPLICANT WERE EMPLOYED BY THE RESPONDENT AS CARPENTERS ON NOVEMBER 19, 1970, THE DATE OF THE MAKING OF THIS APPLICATION, AND THAT NORMAN EDGAR RUTTAN WAS PERFORMING THE WORK OF A CONSTRUCTION LABOURER ON THE DATE OF THE MAKING OF THE APPLICATION. THERE IS THEREFORE A TOTAL OF TWENTY-ONE CARPENTERS ON THE SCHEDULE A FILED BY THE RESPONDENT. HOWEVER, THE BOARD ALSO FINDS THAT ON THE DATE OF THE MAKING OF THIS APPLICATION FOR CERTIFICATION, THREE OF THE CARPENTERS WHOSE NAMES APPEAR ON SCHEDULE A, NAMELY, LORENZO MASSIE, AURELE PORTELANCE AND PAUL TREPANIER WERE EMPLOYED AT THE RESPONDENT'S SHOP AND NOT AT THE VARIOUS SITES OF THE RESPONDENT'S CONSTRUCTION OPERATIONS. ALTHOUGH THESE THREE PERSONS WERE AT WORK ON THE DATE OF THE MAKING OF THE APPLICATION, THEY WERE ENGAGED IN WORK WHICH DOES NOT FALL UNDER THE DEFINITION OF "CONSTRUCTION INDUSTRY" AS SET OUT IN SECTION 1(1)(DA) OF THE LABOUR RELATIONS ACT. THE BOARD HAS HELD THAT SUCH PERSONS CANNOT BE INCLUDED IN A BARGAINING UNIT ON AN APPLICATION FOR CERTIFICATION WHERE SUCH APPLICATION FOR CERTIFICATION IS MADE UNDER THE CONSTRUCTION INDUSTRY PROVISIONS OF THE ACT. SEE THE LAKEVIEW SALVAGE & WRECKING COMPANY CASE, OLRB, M.R., JULY 1967, P. 342 AND TO THE BERGMAN & NELSON LIMITED CASE, OLRB, M.R., NOVEMBER 1966, P. 594. IN THESE CIRCUMSTANCES THE NAMES OF LORENZO MASSIE, AURELE PORTELANCE AND PAUL TREPANIER ARE ALSO REMOVED FROM THE LIST OF EMPLOYEES ON THE SCHEDULE A FILED BY THE RESPONDENT.

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10. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

11. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT.

12. THE MATTER IS REFERRED TO THE REGISTRAR.

18784-70-R: CAMPBELL/MAILOMATIC EMPLOYEES ASSOCIATION (APPLICANT) V. CAMPBELL REPRODUCTIONS LIMITED (RESPONDENT).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS P.J. O'KEEFE AND J.E.C. ROBINSON, Q.C..

APPEARANCES AT THE HEARING: RALPH D. SWEET, Q.C., APPEARING FOR THE APPLICANT; AND NO ONE APPEARING FOR THE RESPONDENT.

DECISION OF THE BOARD: FEBRUARY 1, 1971.

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2. THE APPLICANT APPEARED BEFORE THE BOARD FOR THE FIRST TIME IN THE PRESENT APPLICATION AND IN ACCORDANCE WITH THE REQUIREMENTS OF THE BOARD IT WAS REQUIRED TO PROVE ITS STATUS AS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

3. HAVING REGARD TO THE REPRESENTATIONS BEFORE IT, THE BOARD FINDS THAT ALL EMPLOYEES OF THE RESPONDENT IN OTTAWA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, INSPECTORS, PRODUCTION CONTROL DEPARTMENT EMPLOYEES, SECURITY GUARDS, OFFICE STAFF AND PERSONS EMPLOYED REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. ON THE QUESTION OF MEMBERSHIP THE APPLICANT'S CONSTITUTION PROVIDES IN ARTICLE 1 THEREOF:

DEFINITIONS -
THE COMPANY SHALL HEREINAFTER
MEAN CAMPBELL/MAILOMATIC
PRINTING LTD. EMPLOYEES SHALL
MEAN ANY PERSON MALE OR FEMALE
AFTER THREE MONTHS IN THE EMPLOY
OF THE COMPANY.

AND FURTHER PROVIDES IN ARTICLE 11 A) THEREOF:

UPON PAYMENT OF HIS DUES,
ANY PERSON WHO IS QUALIFIED
UNDER THE DEFINITION OF

"EMPLOYEE" AS GIVEN IN NO.1,
PAGE 1, OF THIS CONSTITUTION,
AUTOMATICALLY BECOMES A MEM-
BER OF THE EMPLOYEES' AS-
SOCIATION.

5. THE BARGAINING UNIT FOUND BY THE BOARD TO BE APPROPRIATE IN THIS CASE INCLUDED ALL EMPLOYEES WITH THE DESIGNATED EXEMPTIONS DEFINED IN PARAGRAPH 3. THE APPLICANT, BY ITS CONSTITUTION, HAS CREATED A BAR TO THE ADMISSION TO MEMBERSHIP OF EMPLOYEES EMPLOYED FOR A PERIOD OF LESS THAN THREE MONTHS. THIS CASE FALLS SQUARELY WITHIN THE PRINCIPLE SET OUT IN THE GAYMER & OULTRAM CASE, 54 CLLC ¶17,073 AND THE OTTAWA CITIZEN CASE, 54 CLLC ¶17,076. THE APPLICATION IS THEREFORE DISMISSED.

6. IN VIEW OF OUR FINDING WITH RESPECT TO ELIGIBILITY OF MEMBERSHIP IN THE APPLICANT IT IS UNNECESSARY TO DETERMINE WHETHER THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT. HOWEVER, SINCE THE INSTANT CASE MARKS THE FIRST APPEARANCE OF THE APPLICANT BEFORE THE BOARD WE BELIEVE THAT WE SHOULD DRAW ATTENTION TO THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT. WHILE THE NAME OF THE APPLICANT IS THE CAMPBELL/MAILOMATIC EMPLOYEES ASSOCIATION, THE EVIDENCE OF MEMBERSHIP PURPORTED TO BE IN THE CAMPBELL MAIL-O-MATIC PRINTING EMPLOYEES ASSOCIATION. THERE IS THEREFORE NO EVIDENCE OF MEMBERSHIP IN THE APPLICANT BEFORE THE BOARD. REFERENCE IS MADE TO THE CANADIAN HOME PRODUCTS LTD. CASE, 60 CLLC ¶16,173.

18919-70-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. IAN DOUGLAS LTD. TRADING AS DRYDEN CLEANERS & LAUNDERERS (RESPONDENT) V. EMPLOYEE (OBJECTOR).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS J. D. BELL AND E. BOYER.

DECISION OF THE BOARD: MARCH 22, 1971.

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4. IN THIS APPLICATION FOR CERTIFICATION THE APPLICANT CHALLENGED THE LISTS OF EMPLOYEES FILED BY THE RESPONDENT. AS THE BOARD STATED IN THE SYDENHAM DISTRICT HOSPITAL CASE, OLRB, M.R., MAY 1967, P. 135, IT IS THE BOARD'S EXPERIENCE THAT IN ORDER TO DETERMINE WHETHER A PERSON FALLS WITHIN A BARGAINING UNIT OF FULL-TIME EMPLOYEES OR A BARGAINING UNIT OF EMPLOYEES REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK, IT WOULD BE USEFUL TO LOOK AT THE PERIOD OF SEVEN WEEKS IMMEDIATELY PRECEDING THE MAKING OF THE APPLICATION AS

BEING A MANAGEABLE REPRESENTATION PERIOD IN THE VAST MAJORITY OF CASES. THEREFORE, IF SUCH A REPRESENTATION PERIOD IS USED AND A PERSON WAS EMPLOYED FOR FOUR OR MORE OF THE SEVEN WEEKS UNDER CONSIDERATION, FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK, THE BOARD WOULD THEN BE IN A POSITION TO FIND THAT THE PERSON WAS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK. IF, ON THE OTHER HAND, THE PERSON WAS EMPLOYED FOR FOUR OR MORE OF THE SEVEN WEEKS, UNDER CONSIDERATION FOR MORE THAN TWENTY-FOUR HOURS PER WEEK, THE BOARD WOULD BE ABLE TO FIND THAT THE PERSON PROPERLY BELONGS TO THE "FULL-TIME" BARGAINING UNIT. IT IS, OF COURSE, RECOGNIZED THAT A PERSON MAY MOVE FROM A "FULL-TIME" TO A "PART-TIME" BARGAINING UNIT DEPENDING UPON WHAT PERIOD OF EMPLOYMENT IS CONSIDERED.

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18975-70-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. TRADE-WOODS MANOR NURSING HOME (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: W. V. SASSO, J. BEATTIE AND W. A. ACTON FOR THE APPLICANT; C. A. MORLEY AND R. W. PARTON FOR THE RESPONDENT; ROBIN B. CUMINE AND KATHERINE C. PREYER FOR THE GROUP OF EMPLOYEES.

DECISION OF THE BOARD: MARCH 29, 1971.

1. THIS IS AN APPLICATION FOR CERTIFICATION.

2. AT THE INITIAL HEARING IN THIS MATTER ON FEBRUARY 24, 1971, THE APPLICANT INFORMED THE BOARD THAT IT HAD RECEIVED NOTIFICATION FROM THE BOARD OF THE STATEMENT OF DESIRE FILED IN OPPOSITION TO ITS APPLICATION LATE IN THE AFTERNOON OF FEBRUARY 22, 1971 - LESS THAN 48 HOURS PRIOR TO THE HEARING. THESE FACTS WERE NOT DISPUTED BY COUNSEL FOR THE TWO PARTIES. THE APPLICANT STATED THAT IN VIEW OF THE SHORTNESS OF THE NOTICE FROM THE BOARD REGARDING THE STATEMENT OF DESIRE, IT WAS REQUESTING AN ADJOURNMENT SO THAT IT MIGHT HAVE AN OPPORTUNITY TO INVESTIGATE THE CIRCUMSTANCES SURROUNDING THE STATEMENT OF DESIRE, AND, IF NECESSARY, FILE CHARGES AND RETAIN COUNSEL.

3. AFTER HEARING THE REPRESENTATIONS OF THE PARTIES, THE BOARD GRANTED AN ADJOURNMENT OF THE HEARING AND DIRECTED THE APPLICANT TO FILE IF IT SO DESIRED, ANY ALLEGATIONS OF IMPROPER OR IRREGULAR CONDUCT TOGETHER WITH PARTICULARS THEREON WITH THE BOARD ON OR BEFORE MARCH 3, 1971.

4. ON MARCH 3, 1971 THE APPLICANT FILED ALLEGATIONS OF IMPROPER OR IRREGULAR CONDUCT IN CONNECTION WITH THE STATEMENT OF DESIRE FILED IN OPPOSITION TO THIS APPLICATION. ON MARCH 8, 1971, COUNSEL FOR THE GROUP OF OBJECTING EMPLOYEES FILED A LETTER WITH THE BOARD IN WHICH HE STATED, INTER ALIA:

"1. THE APPLICANT THROUGH ITS REPRESENTATIVES WAS WELL AWARE OF THE EXISTENCE OF A PETITION BY THE 15TH DAY OF FEBRUARY, 1971 AND HAS THEREFORE FAILED TO PROMPTLY INVESTIGATE THE CIRCUMSTANCES SURROUNDING THE PETITION AND TO PROMPTLY PROVIDE DETAILS OF ANY CHARGES IN RESPECT THERETO.

2. THE APPLICANT KNOWINGLY MISLED THE BOARD AT THE HEARING OF THE BOARD HELD ON THE 24TH DAY OF FEBRUARY, 1971 IN STATING THAT THE PETITION ONLY 'CAME TO ITS NOTICE ON THE 22ND OF FEBRUARY, 1971 WHEN IN FACT IT HAD KNOWN OF THE EXISTENCE OF THE PETITION AS EARLY AS FEBRUARY 15TH, 1971."

5. AT THE CONTINUATION OF HEARING ON MARCH 18, 1971, COUNSEL FOR THE GROUP OF OBJECTING EMPLOYEES MADE A MOTION THAT, IN THE LIGHT OF HIS ALLEGATIONS, THE CHARGES FILED BY THE APPLICANT SHOULD NOT BE HEARD BY THE BOARD. HE ADOPTED THE POSITION THAT HAVING REGARD TO SECTION 47 (1) AND (2) OF THE BOARD'S RULES OF PROCEDURE AND TO THE PRINCIPLE ENUNCIATED IN THE FLECK MANUFACTURING LIMITED CASE, 62 CLLC ¶ 16,236, THE APPLICANT HAD NOT MADE PROMPT INQUIRIES OF THE CIRCUMSTANCES RELEVANT TO ITS CASE.

6. COUNSEL FOR THE APPLICANT DENIED THAT THE APPLICANT HAD KNOWLEDGED OF THE DOCUMENT CIRCULATED IN OPPOSITION TO THE APPLICATION UNTIL IT WAS SERVED WITH NOTICE OF THE STATEMENT OF DESIRE BY THE BOARD ON FEBRUARY 22, 1971.

7. THE BOARD INVITED THE PARTIES TO ADDRESS ARGUMENTS TO IT ON THE MOTION MADE BY COUNSEL FOR THE GROUP OF OBJECTING EMPLOYEES, ASSUMING FOR THE PURPOSES OF ARGUMENT (WITHOUT THE BOARD SO FINDING), THAT THE APPLICANT HAD KNOWLEDGED OF A DOCUMENT CIRCULATED IN OPPOSITION TO THE APPLICATION AS EARLY AS FEBRUARY 15, 1971.

8. IN THE FLECK MANUFACTURING LIMITED CASE, SUPRA, THE BOARD STATED:

"IT IS INCUMBENT ON ALL PARTIES TO PROCEEDINGS BEFORE THE BOARD TO INVESTIGATE MATTERS RELEVANT TO THEIR CASES AS EARLY AS POSSIBLE AND IF THEY INTEND TO MAKE ALLEGATIONS OF IMPROPER OR IRREGULAR CONDUCT AGAINST ANOTHER PARTY TO

DO SO PROMPTLY. THE OBJECT OF THIS REQUIREMENT, WHICH FINDS EXPRESSION IN SECTION 48 [NOW SECTION 47] OF THE RULES, IS OBVIOUSLY TO EXPEDITE AND FACILITATE THE HEARING AND PROCESSING OF APPLICATIONS UNDER THE ACT AND TO AVOID PREJUDICE, DELAY OR EMBARRASSMENT TO THE PARTIES INVOLVED. DELAYED AND LAST-MINUTE ALLEGATIONS, WHICH LEAD TO ADJOURNMENTS OR CAUSE PREJUDICE, EMBARRASSMENT OR UNNECESSARY EXPENSE TO THE OTHER PARTIES, AND WHICH WITH REASONABLE DILIGENCE COULD HAVE BEEN MADE AT A MORE TIMELY STAGE OF THE PROCEEDINGS WILL NOT BE ENTERTAINED EXCEPT FOR GOOD AND SUFFICIENT CAUSE. (EMPHASIS SUPPLIED)"

THE MATERIAL PROVISIONS OF THE RULES THERE REFERRED TO ARE NOW CONTAINED IN SECTION 47 (1) AND (2) OF THE BOARD'S RULES OF PROCEDURE. THESE PROVISIONS ARE AS FOLLOWS:

47. (1) WHERE A PERSON INTENDS TO ALLEGE, AT THE HEARING OF AN APPLICATION OR COMPLAINT, IMPROPER OR IRREGULAR CONDUCT BY ANY PERSON, HE SHALL,
- (A) INCLUDE IN THE APPLICATION OR COMPLAINT;
OR
 - (B) FILE A NOTICE OF INTENTION THAT SHALL CONTAIN,

A CONCISE STATEMENT OF THE MATERIAL FACTS, ACTIONS AND OMISSIONS UPON WHICH HE INTENDS TO RELY AS CONSTITUTING SUCH IMPROPER OR IRREGULAR CONDUCT INCLUDING THE TIME WHEN AND THE PLACE WHERE THE ACTIONS OR OMISSIONS COMPLAINED OF OCCURRED AND THE NAMES OF THE PERSONS WHO ENGAGED IN OR COMMITTED THEM, BUT NOT THE EVIDENCE BY WHICH THE MATERIAL FACTS, ACTIONS OR OMISSIONS ARE TO BE PROVED, AND, WHERE HE ALLEGES THAT THE IMPROPER OR IRREGULAR CONDUCT CONSTITUTES A VIOLATION OF ANY PROVISION OF THE ACT, HE SHALL INCLUDE A REFERENCE TO THE SECTION OR SECTIONS OF THE ACT CONTAINING SUCH PROVISION.

- (2) WHERE, IN THE OPINION OF THE BOARD, A PERSON HAS NOT FILED NOTICE OF INTENTION

PROMPTLY UPON DISCOVERING THE ALLEGED IMPROPER OR IRREGULAR CONDUCT, HE SHALL NOT ADDUCE EVIDENCE AT THE HEARING OF THE APPLICATION OF SUCH FACTS, EXCEPT WITH THE CONSENT OF THE BOARD AND, IF THE BOARD DEEMS IT ADVISABLE TO GIVE SUCH CONSENT, IT MAY DO SO UPON SUCH TERMS AND CONDITIONS AS IT THINKS ADVISABLE."

9. IN OUR OPINION, A DOCUMENT CIRCULATED IN OPPOSITION TO AN APPLICATION FOR CERTIFICATION BECOMES RELEVANT TO AN APPLICANT'S CASE BEFORE THE BOARD, ONCE THE OBJECTING EMPLOYEES HAVE FILED THE SAME WITH THE BOARD IN ACCORDANCE WITH THE PROVISIONS OF SECTION 48 OF THE BOARD'S RULES OF PROCEDURE AND UPON THE APPLICANT BEING NOTIFIED BY THE BOARD THAT A STATEMENT OF DESIRE HAD BEEN FILED IN OPPOSITION TO THE APPLICATION. EVEN THOUGH A DOCUMENT IN OPPOSITION TO AN APPLICATION FOR CERTIFICATION MAY BE CIRCULATED AMONG THE EMPLOYEES, IT MAY NEVER BE FILED WITH THE BOARD, OR, IT MAY BE MAILED TO THE BOARD AND YET NOT COMPLY WITH SECTION 48 OF THE BOARD'S RULES OF PROCEDURE. THE APPLICANT FOR CERTIFICATION IS ENTITLED TO RECEIVE NOTICE FROM THE BOARD OF A STATEMENT OF DESIRE FILED IN OPPOSITION TO ITS APPLICATION AND TO HAVE THE TIME OF SUCH NOTICE TAKEN INTO ACCOUNT WHEN THE BOARD ASSESSES WHETHER IN ALL THE CIRCUMSTANCES THE APPLICANT HAS ACTED WITH DUE DILIGENCE IN INVESTIGATING AND FILING ALLEGATIONS OF IMPROPER OR IRREGULAR CONDUCT IN CONNECTION WITH THE STATEMENT OF DESIRE.

10. HAVING REGARD TO THE FOREGOING, THE BOARD FINDS THAT IN ALL THE CIRCUMSTANCES THE APPLICANT WAS ENTITLED TO THE EXTENSION OF TIME GRANTED TO IT BY THE BOARD TO INVESTIGATE THE STATEMENT OF DESIRE FILED IN OPPOSITION TO ITS APPLICATION FOR CERTIFICATION. THE MOTION MADE BY COUNSEL FOR THE GROUP OF OBJECTING EMPLOYEES IS THEREFORE DISMISSED. THE REGISTRAR IS DIRECTED TO LIST THIS MATTER FOR CONTINUATION OF HEARING AND ALL OUTSTANDING ISSUES.

11. THE MATTER IS REFERRED TO THE REGISTRAR.

44-70-R: BAKERY & CONFECTIONERY WORKERS' INTERNATIONAL UNION OF AMERICA, LOCAL 264 (APPLICANT) v. BARCA'S BAKERY LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

DECISION OF THE BOARD: MARCH 24, 1971.

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2. THE RESPONDENT HAS PREMISES IN TWO LOCATIONS IN WELLAND. A BAKERY IS LOCATED AT 298 CROWLAND AVENUE. AS WELL AS THE PRODUCTION OPERATIONS THERE IS A RETAIL SALES OUTLET AT THE BAKERY. THREE OF THE EMPLOYEES WHO ARE PRIMARILY ENGAGED IN PRODUCTION WORK IN THE BAKERY SPEND APPROXIMATELY 20 PER CENT OF THEIR TIME SERVING CUSTOMERS AT THE SALES COUNTER. THE RESPONDENT ALSO HAS A RETAIL SALES OUTLET LOCATED AT A SHOPPING PLAZA ON FITCH STREET. TWO PERSONS ARE EMPLOYED FULL TIME AS SALES CLERKS AT THIS LOCATION.

3. THE PAST PRACTICE OF THE BOARD HAS BEEN NOT TO INCLUDE PERSONS EMPLOYED IN RETAIL SALES OUTLETS IN THE SAME BARGAINING UNIT WITH PRODUCTION EMPLOYEES IN BAKERIES. HAVING REGARD TO THE FACTS OF THE INSTANT CASE AND THE REPRESENTATIONS OF THE PARTIES, THE BOARD SEES NO REASON TO DEPART IN THE PRESENT INSTANCE FROM THIS PRACTICE. THE BOARD ACCORDINGLY FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT 298 CROWLAND AVENUE IN WELLAND, SAVE AND EXCEPT MANAGER, PERSONS ABOVE THE RANK OF MANAGER, OFFICE STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. FOR PURPOSES OF CLARITY, THE BOARD DECLARES THAT THE THREE PRODUCTION EMPLOYEES WHO ALSO SERVE CUSTOMERS AT THE SALES OUTLET AT THE BAKERY AS PART OF THEIR DUTIES ARE INCLUDED IN THE BARGAINING UNIT, SINCE THEY SPEND THE GREAT MAJORITY OF THEIR TIME ENGAGED IN PRODUCTION WORK.

5. FOR PURPOSES OF CLARITY, THE BOARD DECLARES THAT THE TWO PERSONS EMPLOYED IN A FULL-TIME CAPACITY AS SALES CLERKS AT THE RETAIL SALES OUTLET IN THE SHOPPING PLAZA ARE NOT INCLUDED IN THE BARGAINING UNIT.

6. FOR PURPOSES OF CLARITY, THE BOARD NOTES THE AGREEMENT OF THE PARTIES RECORDED WITH THE EXAMINER APPOINTED IN THIS MATTER THAT LENA BARCA DOES NOT EXERCISE MANAGERIAL FUNCTIONS AND IS NOT EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND IS INCLUDED IN THE BARGAINING UNIT.

7. FOR PURPOSES OF CLARITY, THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT PATRICK VILLELLA IS CLASSIFIED AS MANAGER.

8. FOR PURPOSES OF CLARITY, THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT THE ROUTE SALESMEN ARE INCLUDED IN THE BARGAINING UNIT.

9. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT MORE THAN THIRTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS

MADE, WERE MEMBERS OF THE APPLICANT ON MARCH 4, 1971, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

10. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

11. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT.

12. THE MATTER IS REFERRED TO THE REGISTRAR.

18138-70-R: EDMOND BEATTY, HERMANN MORIN, LEON DESCHAMPS, SERAFIM DA COSTA, REGIS VERVILLE, FABIEN BRISSON, ROLLAND HUMBERT, REAL MORIN, RONALD M. LARABEE, GAETAN MORIN, JEAN RIOUX, ARMAND COUTURE, MARCEL CLOUTIER, JEAN-LOUIS MORIN, JEAN GUY JACQUES, GILLES MORIN, JACQUES PELLETIER, CALIXTE MORIN, MARCISSE BELANGER, ROMIO TALBOT, PAUL LEONARD, GEORGES RIOUX, DENIS F. CHEFF, YVES DROVIN, GILLES DUMONT, J. C. BOUCHARD (APPLICANTS) v. CANADIAN CONSTRUCTION, BUILDING MAINTENANCE AND GENERAL WORKERS' UNION (N.C.C.L.) (RESPONDENT) v. L'ABBE CONSTRUCTION LIMITED (INTERVENER).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND J.E.C. ROBINSON, Q.C..

APPEARANCES AT THE HEARING: L. C. ARNOLD AND R. BRIXHE FOR THE APPLICANTS, D. A. PEPIATT, C. THOMAS AND F. LAFRENIERE FOR THE RESPONDENT, J. B. CHADEWICK AND F. L'ABBE FOR THE INTERVENER.

DECISION OF J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBER E. BOYER: MARCH 4, 1971.

1. THE APPLICANTS ARE APPLYING FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS HELD BY THE RESPONDENT BY VIRTUE OF A CERTIFICATE ISSUED BY THIS BOARD DATED APRIL 23, 1970. THE APPLICATION IS MADE UNDER SECTION 44 OF THE LABOUR RELATIONS ACT. IN SUPPORT OF THE APPLICATION, COUNSEL FOR THE APPLICANTS FILED CERTAIN CHARGES AS TO THE CONDUCT OF REPRESENTATIVES OF THE RESPONDENT UNION AND THE INTERVENER COMPANY WHICH COUNSEL SUBMITS CONSTITUTES FRAUD WITHIN THE MEANING OF SECTION 44 OF THE ACT. THE ALLEGATIONS AND PARTICULARS FILED BY COUNSEL FOR THE APPLICANTS IN SUPPORT OF THE APPLICATION ARE SET OUT IN THE BOARD'S DECISION DATED SEPTEMBER 21, 1970. FOR THE REASONS GIVEN IN

THE AFORESAID DECISION, THE BOARD DIRECTED THE REGISTRAR TO LIST THE APPLICATION FOR CONTINUATION OF HEARING FOR THE PURPOSE OF ENTERTAINING THE ALLEGATION OF THE APPLICANTS AND ALL OTHER OUTSTANDING ISSUES. AT THE SUBSEQUENT HEARING BEFORE THE BOARD, ALL PARTIES TO THE PROCEEDING ADDUCED EVIDENCE RELATING TO THE CHARGES OF THE APPLICANTS. THE EVIDENCE IS OUTLINED AND ANALYZED BELOW.

2. EIGHT PERSONS WHO WERE HIRED ON THE NOTRE DAME HOSPITAL PROJECT OF THE INTERVENER TESTIFIED AS TO WHAT TRANSPIRED AT THE TIME OF THEIR HIRING. FABIEN BRISSON GAVE THE FOLLOWING TESTIMONY. HE WENT TO THE PROJECT TO LOOK FOR A JOB IN THE EARLY AFTERNOON OF APRIL 14, 1970. THE FIRST PERSON HE ENCOUNTERED WAS FERNAND LAFRENIERE WHO WAS STANDING BESIDE A PICK-UP TRUCK ON THE ROAD ADJACENT TO THE PROJECT. LAFRENIERE WAS EMPLOYED BY THE INTERVENER ON THE PROJECT AS A MECHANIC. HE WAS ALSO AN ORGANIZER FOR THE RESPONDENT UNION. BRISSON ADVISED LAFRENIERE THAT HE WAS A CARPENTER. LAFRENIERE TOOK BRISSON TO THE PROJECT AND INTRODUCED HIM TO JACQUES BERNARD, THE CARPENTER FOREMAN ON THE PROJECT. LAFRENIERE ALMOST IMMEDIATELY LEFT THEM AND RETURNED TO HIS PICK-UP TRUCK. AFTER MAKING SOME INQUIRIES CONCERNING HIS EXPERIENCE AND WHETHER HE HAD TOOLS, BERNARD TOLD BRISSON THAT THE COMPANY HAD A UNION ON THE PROJECT AND THAT IT WOULD COST HIM ONE DOLLAR TO JOIN AND THREE DOLLARS PER MONTH IN UNION DUES. BRISSON INDICATED TO BERNARD THAT HE WAS PREPARED TO JOIN THE UNION. BERNARD THEN ADVISED HIM THAT HE WAS HIRED AND DIRECTED HIM TO RETURN TO LAFRENIERE. LAFRENIERE REPEATED TO BRISSON WHAT BERNARD HAD SAID CONCERNING THE COMPANY HAVING A UNION ON THE PROJECT. LAFRENIERE PRODUCED AN APPLICATION FOR MEMBERSHIP IN THE RESPONDENT WHICH BRISSON SIGNED AND PAID TO LAFRENIERE A ONE DOLLAR INITIATION FEE. LAFRENIERE GAVE TO BRISSON A "WHITE SLIP" (WHICH WE INFER FROM BRISSON'S EVIDENCE WAS THE ORIGINAL OF THE APPLICATION FOR MEMBERSHIP IN THE RESPONDENT UNION). LAFRENIERE TOLD HIM TO TAKE IT TO THE CLERK IN THE COMPANY OFFICE AND TO TELL THE CLERK THAT HE (BRISSON) WAS HIRED. BRISSON FOLLOWED THESE INSTRUCTIONS. THE CLERK TOLD HIM TO LEAVE THE "PAPER" AND TO RETURN THE FOLLOWING MORNING. BRISSON DID SO AND AT THAT TIME SIGNED OTHER PAPERS. HE COMMENCED WORK ON APRIL 15, 1970 AND CONTINUED TO WORK ON THE PROJECT UNTIL MAY 6, 1970 WHEN HE WAS LAID OFF. THE TDI FORM WHICH BEARS BRISSON'S SIGNATURE IS DATED APRIL 14, 1970 AND HIS TIME CARD INDICATES THAT HE STARTED TO WORK ON APRIL 15, 1970. BRISSON'S STATEMENT OF EARNINGS AND DEDUCTIONS FOR THE PAY PERIOD ENDING ON MAY 1, 1970 SHOWS A DEDUCTION FOR UNION DUES IN THE AMOUNT OF THREE DOLLARS. AS OF THE LATTER DATE THE RESPONDENT AND THE INTERVENER HAD NOT ENTERED INTO A COLLECTIVE AGREEMENT. FOR THAT MATTER THE PARTIES HAD NOT EVEN ENTERED INTO NEGOTIATIONS FOR A COLLECTIVE AGREEMENT BY THE DATE OF THE BOARD HEARING.

3. LAURENT DUGUAY'S EVIDENCE IS THAT HE WENT ON THE PROJECT LOOKING FOR A JOB ON APRIL 13, 1970. HE FIRST WENT TO THE OFFICE OF THE COMPANY BUT WAS SENT BY THE CLERK TO THE SITE FOR THE PURPOSE OF

GETTING A "SLIP OF PAPER" FROM THE UNION. IN THE EARLY AFTERNOON OF THAT DAY, DUGUAY WENT TO SEE LAFRENIERE WHO TOLD HIM THAT THE INITIATION FEE TO JOIN THE RESPONDENT UNION WAS ONE DOLLAR WITH DUES OF THREE DOLLARS PER MONTH. DUGUAY TESTIFIED THAT HE SIGNED AN APPLICATION FOR MEMBERSHIP PROVIDED BY LAFRENIERE AND TOOK THE ORIGINAL WHITE COPY BACK TO THE OFFICE AND GAVE IT TO THE CLERK. A TDI FORM WHICH WAS FILED IN HIS NAME BEARS THE DATE OF APRIL 15, 1970 BUT DOES NOT BEAR DUGUAY'S SIGNATURE. DUGUAY'S EVIDENCE IS THAT IT WAS MADE CLEAR TO HIM BY LAFRENIERE THAT HE HAD TO JOIN THE RESPONDENT UNION IN ORDER TO WORK ON THE PROJECT.

4. SERAFIM DA COSTA'S EVIDENCE IS THAT WHEN HE WENT TO THE PROJECT ON APRIL 14 TO LOOK FOR A JOB HE ENCOUNTERED LAFRENIERE ON THE ROAD ADJACENT TO THE SITE IN A PICK-UP TRUCK. ACCORDING TO DA COSTA, HE TOLD LAFRENIERE THAT HE WAS A CEMENT FINISHER. LAFRENIERE REPLIED THAT THERE WAS NO WORK ON THE PROJECT AT THAT TIME FOR A CEMENT FINISHER BUT THAT HE (DA COSTA) COULD BE HIRED AS A LABOURER. DA COSTA AGREED WITH THIS PROPOSAL. DA COSTA TESTIFIED THAT LAFRENIERE THEN ADVISED HIM THAT THERE WAS A UNION ON THE PROJECT AND THAT HE (DA COSTA) WOULD BE REQUIRED TO JOIN. DA COSTA'S TESTIMONY IS THAT HE SIGNED AN APPLICATION FOR MEMBERSHIP IN THE RESPONDENT UNION AND THAT LAFRENIERE GAVE HIM A "SLIP" AND TOLD HIM TO TAKE IT TO THE CLERK IN THE COMPANY OFFICE. DA COSTA'S EVIDENCE IS THAT HE FOLLOWED LAFRENIERE'S INSTRUCTIONS. A YELLOW COPY OF AN APPLICATION FOR MEMBERSHIP WAS FILED BY THE RESPONDENT AS AN EXHIBIT DATED APRIL 14, 1970, WHICH BEARS THE SIGNATURES OF DA COSTA AND LAFRENIERE. IN WHAT APPEARS TO BE AN ENTIRELY DIFFERENT HANDWRITING THE NUMBER "603" IS ENTERED OPPOSITE THE WORDS "CLOCK No.".

5. THE EVIDENCE OF JEAN LOUIS BRISSON IS THAT WHEN HE APPLIED FOR A JOB ON THE PROJECT ON APRIL 14, 1970, HE ENCOUNTERED LAFRENIERE IN A PICK-UP TRUCK BY THE SIDE OF THE ROAD. ACCORDING TO BRISSON, LAFRENIERE TOLD HIM THE PROJECT WAS A "UNION JOB" AND THAT IT WOULD COST BRISSON ONE DOLLAR TO JOIN THE UNION AND THREE DOLLARS IN MONTHLY DUES. BRISSON SIGNED AN APPLICATION FOR MEMBERSHIP. ACCORDING TO HIS TESTIMONY, ON THE INSTRUCTIONS OF LAFRENIERE, HE WENT TO THE COMPANY OFFICE AND GAVE THE COPY OF THE APPLICATION FOR MEMBERSHIP TO THE CLERK AND SIGNED A TDI FORM. BRISSON TESTIFIED THAT A CONTRACTOR IN THE HEARST AREA HAD TOLD HIM ABOUT THE POSSIBILITY OF A JOB ON THE NOTRE DAME HOSPITAL PROJECT AND IT HAD BEEN THAT PERSON WHO SENT HIM TO SEE LAFRENIERE. IT WOULD APPEAR FROM LAFRENIERE'S TESTIMONY THAT THE CONTRACTOR WHO REFERRED BRISSON TO HIM WAS THE SAME CONTRACTOR WHO HAD LENT LAFRENIERE THE PICK-UP TRUCK HE WAS USING SO THAT HE (LAFRENIERE) COULD GET "BACK AND FORTH" TO WORK. ACCORDING TO BRISSON IT WAS THE CLERK WHO HIRED HIM.

6. RHEAL MORIN TESTIFIED THAT WHEN HE WENT TO THE PROJECT TO LOOK FOR WORK ON APRIL 16, 1970 HE FIRST SPOKE TO BERNARD WHO HIRED

HIM AND THEN SENT HIM TO SEE LAFRENIERE. LAFRENIERE WHO WAS LOCATED AT A PICK-UP TRUCK ON THE ROAD TOLD HIM THERE WAS A UNION ON THE PROJECT AND THAT IT WOULD COST MORIN A DOLLAR INITIATION FEE TO JOIN. MORIN'S EVIDENCE IS THAT HE SIGNED AN APPLICATION FOR MEMBERSHIP AND ON LAFRENIERE'S INSTRUCTIONS HE TOOK THE ORIGINAL OF THE APPLICATION AND GAVE IT TO THE CLERK IN THE COMPANY OFFICE. ACCORDING TO MORIN, LAFRENIERE KEPT THE DUPLICATE COPY OF THE APPLICATION HIMSELF.

7. THE EVIDENCE OF HERMAN MORIN IS THAT WHEN HE APPLIED FOR A JOB ON THE SITE ON APRIL 15 HE ENCOUNTERED BERNARD WHO TOLD HIM TO RETURN THE FOLLOWING MORNING. MORIN DID SO AND AGAIN SAW BERNARD WHO HIRED HIM AS A CARPENTER. BERNARD THEN SENT HIM TO SEE LAFRENIERE. ACCORDING TO MORIN, HE TOLD LAFRENIERE THAT BERNARD HAD SENT HIM. MORIN TESTIFIED THAT LAFRENIERE TOOK HIM TO A PICK-UP TRUCK WHERE MORIN SIGNED AN APPLICATION FOR MEMBERSHIP IN THE RESPONDENT UNION AND PAID A ONE DOLLAR INITIATION FEE. LAFRENIERE ADVISED HIM THAT MONTHLY DUES WERE THREE DOLLARS. LAFRENIERE GAVE HIM A "WHITE SLIP" (PRESUMABLY THE ORIGINAL APPLICATION FOR MEMBERSHIP) AND TOLD HIM TO TAKE IT TO THE COMPANY OFFICE WHEN HE GOT THE CHANCE AND HE WOULD BE HIRED. DURING HIS LUNCH HOUR ON HIS FIRST DAY OF WORK, APRIL 16, MORIN TOOK HIS APPLICATION FOR MEMBERSHIP TO THE COMPANY OFFICE AND GAVE IT TO THE CLERK. MORIN TESTIFIED THAT STARTING WITH HIS FIRST PAY CHEQUE AND FROM EACH SUCCEEDING PAY CHEQUE UNION DUES WERE DEDUCTED. THERE WERE FILED WITH THE BOARD BY THE APPLICANTS THREE STATEMENTS OF EARNINGS AND DEDUCTIONS WHICH MORIN IDENTIFIED AS BEING HIS OWN. THE STATEMENTS DO NOT SHOW THE PAY PERIOD IN QUESTION, BUT EACH OF THE THREE SHOWS THE DEDUCTION OF THREE DOLLARS ON ACCOUNT OF UNION DUES. IN ANY EVENT, DURING ALL OF THIS PERIOD THERE WAS NO COLLECTIVE AGREEMENT, IN EFFECT, BETWEEN THE RESPONDENT AND THE INTERVIEWER.

8. CLAUDE MORIN TESTIFIED THAT WHEN HE WENT TO THE JOB SITE SEEKING A JOB ON APRIL 16, 1970, HE ENCOUNTERED BERNARD WHO SENT HIM TO SEE LAFRENIERE. THE LATTER WAS IN A PICK-UP TRUCK. ACCORDING TO MORIN, LAFRENIERE TOLD HIM HE HAD TO SIGN AN APPLICATION FOR MEMBERSHIP IN THE RESPONDENT UNION. MORIN DID SO AND PAID A ONE DOLLAR INITIATION FEE. THE EVIDENCE OF MORIN IS THAT LAFRENIERE GAVE HIM THE ORIGINAL APPLICATION FOR MEMBERSHIP FORM AND TOLD HIM TO GIVE IT TO THE CLERK IN THE OFFICE. MORIN STATED THAT HE FOLLOWED THOSE INSTRUCTIONS AND WHILE IN THE OFFICE HE ALSO SIGNED A TDI FORM.

9. THE EVIDENCE OF JEAN LOUIS MORIN IS THAT WHEN HE WENT ON THE JOB SITE ON APRIL 23 HE ENCOUNTERED LUCIEN LAROUCHE. ACCORDING TO MORIN, LAROUCHE REPLIED IN THE AFFIRMATIVE WHEN HE (MORIN) ASKED IF LABOURERS WERE NEEDED ON THE JOB. MORIN TESTIFIED THAT LAROUCHE TOLD HIM HE HAD TO JOIN THE RESPONDENT UNION AND PAY A ONE DOLLAR INITIATION FEE AND PAY THREE DOLLARS MONTHLY DUES. MORIN'S TESTIMONY IS THAT HE SIGNED AN APPLICATION FOR MEMBERSHIP AND THAT LA-

ROUCHE GAVE HIM THE APPLICATION TO TAKE TO THE CLERK. ACCORDING TO MORIN, LAROCHE AND HE WERE IN THE COMPANY OFFICE WHEN THE ABOVE EVENTS TRANSPIRED. MORIN FURTHER TESTIFIED THAT LAROCHE GOT THE APPLICATION FOR MEMBERSHIP FORM FOR THE RESPONDENT UNION, WHICH MORIN SIGNED, FROM A DRAWER IN THE COMPANY OFFICE. THE "WHITE" ORIGINAL APPLICATION FOR MEMBERSHIP DATED APRIL 29, 1970 WAS FILED BY THE RESPONDENT AS AN EXHIBIT. JEAN LOUIS MORIN IDENTIFIED HIS SIGNATURE. THE SIGNATURE APPEARING ON THE APPLICATION AS THE COLLECTOR WAS NOT IDENTIFIED. HOWEVER, THE LAST NAME OF THE SIGNATURE IS "LAROSE". THE NAME OF THE OFFICE CLERK WHO WAS HIRED FOR THE PROJECT IN APRIL WAS LAROSE WHO WAS HIRED BY LEROUX. THERE IS A DISCREPANCY BETWEEN MORIN'S TESTIMONY AS TO WHEN HE JOINED THE APPLICANT AND THE DATE APPEARING ON HIS APPLICATION FOR MEMBERSHIP CARD. IN ANY EVENT, MORIN ONLY JOINED THE RESPONDENT ON OR AFTER THE DATE THAT THE BOARD ISSUED ITS CERTIFICATE TO THE RESPONDENT. IN OTHER WORDS, NO EVIDENCE OF MEMBERSHIP WAS SUBMITTED FOR MORIN BY THE RESPONDENT IN SUPPORT OF ITS APPLICATION FOR CERTIFICATION.

10. LUCIEN LAROCHE TESTIFIED THAT HE WAS HIRED AS A WORKING LABOURER FOREMAN ON THE HEARST PROJECT ON APRIL 19 AND COMMENCED WORK ON APRIL 20, 1970. LAROCHE WAS THE UNION STEWARD ON THE PROJECT AFTER LAFRENIERE RETURNED TO OTTAWA ON APRIL 21 OR 22, 1970. ACCORDING TO HIS EVIDENCE, WHEN ANY MEN CAME ON THE PROJECT AND HE HIRED THEM AS LABOURERS HE SENT THEM TO THE COMPANY OFFICE. LAROCHE RECALLED SIGNING JEAN LOUIS MORIN INTO MEMBERSHIP. LAROCHE DENIED, HOWEVER, THAT HE TOLD MORIN OR ANY OTHER PERSONS WHOM HE SIGNED INTO MEMBERSHIP THAT THEY HAD TO JOIN THE RESPONDENT UNION TO GET A JOB ON THE PROJECT.

11. THE EVIDENCE OF JACQUES BERNARD IS THAT HE COMMENCED WORK ON THE HEARST PROJECT ON APRIL 13, 1970 AS A WORKING FOREMAN IN CHARGE OF CARPENTERS. HE WORKED ON THE PROJECT FOR TWO WEEKS AND DURING THAT PERIOD PART OF HIS JOB WAS TO HIRE EMPLOYEES. HE RECALLED WHEN FABIEN BRISSON APPLIED FOR A JOB ON THE PROJECT. ACCORDING TO BERNARD, HE TOLD BRISSON THAT THE RESPONDENT REPRESENTED THE EMPLOYEES OF THE INTERVENER AT OTTAWA. BERNARD DENIED, HOWEVER, TELLING BRISSON THAT THE COMPANY HAD THE RESPONDENT UNION ON THE JOB AND THAT HE WOULD HAVE TO JOIN THE UNION. BERNARD ALSO DENIED INSTRUCTING BRISSON TO SEE LAFRENIERE. MORE GENERALLY, BERNARD DENIED TELLING ANY PERSON HE HIRED THAT THEY HAD TO JOIN THE RESPONDENT UNION AND HE DENIED THAT THERE WAS ANY ARRANGEMENT BETWEEN HIMSELF AND LAFRENIERE TO SIGN NEW EMPLOYEES INTO MEMBERSHIP IN THE RESPONDENT UNION.

12. ROLAND LEROUX IS REGULARLY EMPLOYED BY THE INTERVENER AS AN ACCOUNTANT IN ITS OTTAWA OFFICE. HIS EVIDENCE IS THAT HE WAS SENT TO THE HEARST PROJECT BY THE INTERVENER FOR A THREE-WEEK PERIOD COMMENCING APRIL 14, 1970, FOR THE PURPOSE OF SETTING UP A COMPANY OFFICE AND SELECTING A CLERK TO RUN THE OFFICE. HE TESTIFIED THAT HE TRAVELLED FROM

OTTAWA TO HEARST ON APRIL 13, 1970 IN THE SAME AUTOMOBILE AS HIS EMPLOYER MR. L'ABBE. HIS EVIDENCE IS THAT WHILE LAFRENIERE CAME TO HEARST THE SAME DAY HE DID SO IN ANOTHER AUTOMOBILE. ACCORDING TO LEROUX HE DID NOT HIRE ANY EMPLOYEES. RATHER, ONCE PERSONS WERE HIRED BY LAROCHE OR BERNARD, HE HAD THE PERSONS CONCERNED COMPLETE TDI FORMS AND PREPARED TIME CARDS FOR THEM. LEROUX DENIED THAT HE HAD REQUIRED ANYONE TO PROVIDE HIM WITH AN APPLICATION FOR MEMBERSHIP IN THE RESPONDENT UNION BEFORE HE WOULD REGISTER THE PERSON AS AN EMPLOYEE OR THAT ANYONE, INCLUDING FABIEN BRISSON, HAD GIVEN OR SHOWN HIM AN APPLICATION FOR MEMBERSHIP WHEN THEY CAME TO THE OFFICE. LEROUX FURTHER DENIED THAT HE HAD REFERRED ANY PROSPECTIVE EMPLOYEES TO LAFRENIERE FOR THE PURPOSE OF JOINING THE RESPONDENT UNION. LEROUX TESTIFIED THAT DURING HIS THREE-WEEK PERIOD IN HEARST HE PREPARED THE COMPANY PAYROLL. HE DENIED, HOWEVER, DEDUCTING ANY AMOUNTS OF MONEY FROM THE WAGES OF ANY EMPLOYEES ON THE PROJECT ON ACCOUNT OF UNION DUES. HIS TESTIMONY IS THAT HE HAD NO CONVERSATIONS WITH ANY OFFICIALS OF THE RESPONDENT UNION OR THE INTERVENER COMPANY CONCERNING ANY REQUIREMENT FOR EMPLOYEES TO JOIN THE RESPONDENT. LEROUX SPECIFICALLY DENIED RECEIVING ANY INSTRUCTIONS FROM THE COMPANY TO DEDUCT UNION DUES. LEROUX COULD OFFER NO EXPLANATION, WHEN CONFRONTED WITH THE STATEMENT OF EARNINGS AND DEDUCTIONS FOR FABIEN BRISSON FOR THE PAY PERIOD ENDING MAY 1, 1970, WHICH SHOWS THE DEDUCTION OF UNION DUES IN THE AMOUNT OF THREE DOLLARS, OTHER THAN TO SUGGEST THAT IT MIGHT HAVE BEEN THE OFFICE CLERK LAROSE WHOM HE HIRED WHO MADE THE DEDUCTION. THIS WAS ALSO THE ONLY EXPLANATION WE COULD OFFER FOR THE THREE PAY SLIPS OF HERMAN MORIN WHICH SHOW DEDUCTIONS FOR UNION DUES. LEROUX ALSO DENIED BEING AWARE OF ANY ORGANIZING CAMPAIGN BEING CONDUCTED BY THE RESPONDENT UNION AMONG THE PERSONS WHO WERE EMPLOYED ON THE HEARST PROJECT BUT DID RECALL THE BOARD'S NOTICE OF THE RESPONDENT'S APPLICATION FOR CERTIFICATION.

13. ACCORDING TO FERNAND LAFRENIERE, HE TRAVELLED FROM OTTAWA TO HEARST IN THE SAME AUTOMOBILE AS MR. L'ABBE AND ROLAND LEROUX. LAFRENIERE TESTIFIED, HOWEVER, THAT THE RESPONDENT UNION WAS NOT DISCUSSED DURING THE TRIP. LAFRENIERE'S EVIDENCE IS THAT HE WAS TRANSFERRED FROM OTTAWA TO THE NOTRE DAME HOSPITAL PROJECT AT HEARST BY MR. L'ABBE AS A MECHANIC. HE HAD BEEN A MECHANIC ON PROJECTS FOR THE INTERVENER IN THE OTTAWA AREA FOR A NUMBER OF YEARS. THE RESPONDENT AND INTERVENER ARE PARTIES TO A COLLECTIVE AGREEMENT COVERING THE COMPANY'S EMPLOYEES AT OTTAWA. LAFRENIERE IS THE UNION STEWARD IN OTTAWA FOR THE EMPLOYEES CONCERNED. THE EVIDENCE OF LAFRENIERE IS THAT BEFORE GOING TO HEARST HE WAS IN COMMUNICATION WITH CLIVE THOMAS, THE GENERAL BUSINESS AGENT FOR THE RESPONDENT UNION, WHO PROPOSED THAT LAFRENIERE TRY TO ORGANIZE THE EMPLOYEES OF THE INTERVENER ON THE HEARST PROJECT. LAFRENIERE AGREED TO DO SO. ACCORDING TO LAFRENIERE, THOMAS GAVE HIM APPLICATION FOR MEMBERSHIP FORMS, A SAMPLE OF WHICH LAFRENIERE IDENTIFIED. THE APPLICATION FORM CONSISTS OF A WHITE ORIGINAL AND A YELLOW COPY. LAFRENIERE TESTIFIED THAT UPON THE INSTRUCTIONS OF THOMAS HE

SENT BOTH THE ORIGINAL AND COPY OF EACH APPLICATION FOR MEMBERSHIP OF THOSE PERSONS HE SIGNED INTO MEMBERSHIP TO CLIVE THOMAS IN OTTAWA. LAFRENIERE'S EVIDENCE IS THAT HE DID NOT GIVE ANY OF THE EMPLOYEES ON THE PROJECT THE ORIGINAL OR COPY OF THE APPLICATION FOR MEMBERSHIP OR A RECEIPT FOR THE PAYMENT OF THE ONE DOLLAR INITIATION FEE. LAFRENIERE'S TESTIMONY IS THAT HE STATIONED HIMSELF ON THE ROAD OUTSIDE THE JOB SITE IN A PICK-UP TRUCK WHICH HAD BEEN LENT TO HIM BY A CONTRACTOR IN THE HEARST AREA, SO THAT HE COULD GET BACK AND FORTH TO WORK. ACCORDING TO LAFRENIERE, WHEN EMPLOYEES WERE HIRED AND CAME TO WORK ON THE PROJECT HE APPROACHED THEM TO JOIN THE UNION. HE DENIED THAT HE EVER TOLD ANYONE THAT THEY HAD TO JOIN THE RESPONDENT UNION IN ORDER TO WORK ON THE PROJECT. HE FURTHER DENIED THAT ANY EMPLOYEE TOLD HIM HE HAD BEEN SENT TO HIM (LAFRENIERE) BY A FOREMAN OR OFFICE CLERK. LAFRENIERE'S EVIDENCE IS THAT HE HAD NO AUTHORITY TO HIRE EMPLOYEES AND THAT HE DID NOT DO SO. LAFRENIERE LEFT THE PROJECT AROUND APRIL 22, 1970 BECAUSE OF THE ILLNESS OF HIS WIFE IN OTTAWA. LAFRENIERE ALSO DENIED EVER ASKING THE INTERVENER TO DEDUCT UNION DUES FROM ANY OF THE EMPLOYEES WHOM HE SIGNED UP ON THE HEARST PROJECT.

14. THE EVIDENCE OF CLIVE THOMAS IS CONFIRMATORY OF THAT OF LAFRENIERE. ACCORDING TO THOMAS, LAFRENIERE AND LAROCHE MAILED TO HIM BOTH THE ORIGINAL AND COPY OF EACH APPLICATION FOR MEMBERSHIP FOR EACH PERSON WHO JOINED THE RESPONDENT UNION ON THE HEARST PROJECT. THOMAS FURTHER TESTIFIED THAT HE HAD RECEIVE A CHECK-OFF FROM THE INTERVENER COMPANY FOR UNION DUES IN THE AMOUNT OF THIRTY DOLLARS, WITH AN ACCOMPANYING NOTE TO THE EFFECT THAT THE NAMES OF THE EMPLOYEES FOR WHOM THE CHECK-OFF WAS MADE WOULD FOLLOW. HIS EVIDENCE IS THAT NO LIST OF NAMES, IN FACT, WAS SENT TO HIM. REGARDLESS OF THE IDENTITY OF THE PERSONS FOR WHOM THE UNION DUES WERE SUBMITTED, THE DEDUCTION WAS MADE NOTWITHSTANDING THAT THERE WAS NO COLLECTIVE AGREEMENT IN EFFECT BETWEEN THE RESPONDENT AND THE INTERVENER.

15. AS THE ABOVE OUTLINE REVEALS, THE EVIDENCE ABOUNDS IN IRRECONCILABLE CONFLICTS BETWEEN THE TESTIMONY OF THE EMPLOYEES OF THE INTERVENER HIRED ON THE HEARST PROJECT WHO WERE CALLED AS WITNESSES BY THE APPLICANTS AND THE TESTIMONY OF THE WITNESSES CALLED BY THE RESPONDENT UNION AND THE INTERVENER COMPANY. BY WAY OF SUMMARY, SEVEN OF THE EMPLOYEES TESTIFIED THAT THEY WERE SIGNED INTO MEMBERSHIP BY LAFRENIERE AND THAT HE GAVE THEM THE ORIGINAL OF THE APPLICATION FOR MEMBERSHIP IN THE RESPONDENT UNION AND INSTRUCTED THEM TO TAKE THE 'WHITE SLIP' TO THE CLERK IN THE COMPANY OFFICE. ALL SEVEN TESTIFIED THAT THEY FOLLOWED LAFRENIERE'S INSTRUCTIONS AND GAVE THEIR SIGNED APPLICATIONS FOR MEMBERSHIP IN THE UNION TO THE CLERK. LAFRENIERE, ON THE OTHER HAND, TESTIFIED THAT HE DID NOT GIVE EITHER THE WHITE ORIGINAL OR YELLOW COPY OF THE APPLICATION FOR MEMBERSHIP TO ANY OF THE PERSONS HE SIGNED INTO MEMBERSHIP OR FOR THAT MATTER HE DID NOT GIVE THEM A RECEIPT OF ANY KIND. THE EVIDENCE OF CLIVE THOMAS IS THAT HE RECEIVED BY MAIL FROM LAFRENIERE BOTH THE ORIGINAL

AND COPY OF EACH APPLICATION FOR MEMBERSHIP FOR THE PERSONS LAFRENIERE SIGNED INTO MEMBERSHIP IN THE RESPONDENT UNION. THE EVIDENCE OF ROLAND LEROUX, THE OFFICE CLERK, IS THAT HE NEITHER ASKED FOR NOR WAS GIVEN AN APPLICATION FOR MEMBERSHIP IN THE RESPONDENT UNION BY AN EMPLOYEE WHO WAS HIRED BY THE INTERVENER.

16. THE EIGHTH EMPLOYEE JEAN LOUIS MORIN TESTIFIED THAT HE WAS SIGNED INTO MEMBERSHIP BY LAROUCHE, THE UNION STEWARD WHO SUCCEEDED LAFRENIERE ON THE PROJECT. ACCORDING TO MORIN, LAROUCHE SECURED THE APPLICATION FOR MEMBERSHIP FORM FROM A DRAWER IN THE COMPANY OFFICE. AS HAS BEEN STATED, THE ORIGINAL "WHITE" APPLICATION FOR MEMBERSHIP FOR MORIN WHICH WAS FILED WITH THE BOARD BY THE RESPONDENT UNION SHOWS THE SIGNATURE OF SOMEONE BY THE NAME OF "LAROSE". ALTHOUGH THE SIGNATURE WAS NOT IDENTIFIED, THE LAST NAME OF THE OFFICE CLERK WHO WAS HIRED BY LEROUX WAS LAROSE. THE EVIDENCE WOULD INDICATE THAT HE WAS WORKING IN THE OFFICE ON APRIL 29, 1970, THE DATE APPEARING ON MORIN'S APPLICATION FOR MEMBERSHIP. LAROUCHE RECALLED SIGNING MORIN INTO MEMBERSHIP SOME TIME AFTER APRIL 23, BUT HE COULD NOT RECALL THE CIRCUMSTANCES. HE DENIED, HOWEVER, GIVING ANY APPLICATION FOR MEMBERSHIP TO THE OFFICE CLERK FOR ANY PERSON WHOM HE SIGNED INTO MEMBERSHIP. LAROUCHE'S TESTIMONY IN THIS REGARD IS THE SAME AS BERNARD'S. THAT IS, HIS EVIDENCE IS THAT HE FORWARDED BOTH THE ORIGINAL AND COPY OF EACH APPLICATION FOR MEMBERSHIP BY MAIL TO THOMAS.

17. FABIEN BRISSON TESTIFIED THAT WHEN HE WENT ON THE PROJECT TO LOOK FOR A JOB HE ENCOUNTERED LAFRENIERE WHO INTRODUCED HIM TO BERNARD. ACCORDING TO BRISSON, BERNARD TOLD HIM HE HAD TO JOIN THE RESPONDENT UNION AND SENT HIM BACK TO LAFRENIERE TO SIGN AN APPLICATION FOR MEMBERSHIP. RHEAL MORIN, CLAUDE MORIN AND HERMAN MORIN ALL TESTIFIED THAT WHEN THEY CAME ON THE PROJECT AND WERE HIRED BY BERNARD HE SENT THEM TO SEE LAFRENIERE WHO SIGNED THEM INTO MEMBERSHIP IN THE RESPONDENT UNION. BERNARD AND LAFRENIERE BOTH DENIED THAT THE LATTER HAD INTRODUCED BRISSON TO THE FORMER AND BERNARD DENIED REFERRING BRISSON OR THE MORIN'S OR ANY OTHER PERSONS WHOM HE HIRED ON THE PROJECT TO LAFRENIERE. BOTH LAFRENIERE AND BERNARD MADE A BLANKET DENIAL THAT THERE WAS ANY ARRANGEMENT BETWEEN THEM FOR REQUIRING EMPLOYEES HIRED ON THE PROJECT TO JOIN THE RESPONDENT UNION. WE WOULD MENTION HERE THAT IN LIGHT OF THE FACT THAT ONE OF THE DUTIES OF BOTH BERNARD AND LAROUCHE WAS TO HIRE EMPLOYEES TO WORK ON THE PROJECT, THERE IS NO QUESTION IN OUR MIND BUT THAT THEY WERE EXERCISING MANAGERIAL RESPONSIBILITIES. SIMILARLY, LEROUX, WHILE PERHAPS NOT A MEMBER OF MANAGEMENT WHILE WORKING AS AN ACCOUNTANT IN OTTAWA, WAS THE PRINCIPAL REPRESENTATIVE OF THE INTERVENER ON THE PROJECT AND ACCORDINGLY, IN THE CONTEXT OF THE HEARST PROJECT, WE FIND THAT HE ALSO WAS MANAGERIAL IN STATUS.

18. THERE IS EVEN A CONFLICT BETWEEN THE EVIDENCE OF LAFRENIERE AND LEROUX AS TO THEIR TRAVELLING COMPANIONS FROM OTTAWA TO HEARST.

LAFRENIERE TESTIFIED THAT HE TRAVELLED IN THE SAME AUTOMOBILE AS LEROUX AND MR. L'ABBE. LEROUX, ON THE OTHER HAND, TESTIFIED THAT LAFRENIERE DID NOT TRAVEL IN THE SAME AUTOMOBILE AS HIMSELF AND MR. L'ABBE. WHILE SPEAKING OF MOTOR VEHICLES, WE FIND IT SOMEWHAT UNUSUAL THAT A CONTRACTOR IN THE HEARST AREA SHOULD LOAN TO LAFRENIERE, A MECHANIC EMPLOYED BY THE INTERVENER, A PICK-UP TRUCK FOR THE PURPOSE, ACCORDING TO LAFRENIERE, OF GETTING BACK AND FORTH TO WORK. IN FACT, IT IS CLEAR FROM THE EVIDENCE THAT LAFRENIERE USED THE PICK-UP TRUCK AS HIS "OUTDOOR OFFICE" TO SOLICIT MEMBERSHIP IN THE RESPONDENT UNION.

19. IN LIGHT OF THE MANY CONFLICTS IN THE TESTIMONY, IT IS NECESSARY FOR THE BOARD TO ASSESS THE DEGREE OF CREDIBILITY WHICH IT IS PREPARED TO ATTRIBUTE TO THE VARIOUS WITNESSES. LAFRENIERE AND LAROUCHE TESTIFIED THAT THEY GAVE NEITHER THE ORIGINAL COMBINATION APPLICATION FOR MEMBERSHIP AND RECEIPT NOR THE YELLOW CARBON COPY OF THE APPLICATION TO ANY OF THE EMPLOYEES OF THE INTERVENER WHOM THEY SIGNED INTO MEMBERSHIP IN THE RESPONDENT. ACCORDING TO THEIR TESTIMONY, THEY GAVE NO RECEIPTS OF ANY KIND TO THE EMPLOYEES CONCERNED NOTWITHSTANDING THAT THEY COLLECTED A ONE DOLLAR INITIATION FEE FROM THEM. THIS IN ITSELF SEEMS TO US TO BE A MOST UNUSUAL PROCEDURE. WE WOULD POINT OUT ALSO THAT THE SENTENCE AT THE BOTTOM OF THE APPLICATION FOR MEMBERSHIP READS "(THE DUPLICATE OF THIS FORM TO BE GIVEN AS RECEIPT AND TEMPORARY MEMBERSHIP CARD)". RATHER, THE EVIDENCE OF LAFRENIERE AND LAROUCHE, WHICH IS CONFIRMED BY THAT OF CLIVE THOMAS, IS THAT THEY MAILED BOTH THE WHITE ORIGINAL AND YELLOW COPY OF THE APPLICATIONS FOR MEMBERSHIP "INTACT" TO THOMAS IN OTTAWA. THOMAS, HOWEVER, DID NOT PRODUCE THE SAID ORIGINALS AND COPIES OF THE APPLICATIONS AT THE BOARD HEARING ALTHOUGH HE CLAIMED TO HAVE THEM IN HIS POSSESSION IN HIS OTTAWA OFFICE. HIS EXPLANATION FOR NOT HAVING THEM AT THE BOARD HEARING WAS THAT HE HAD NO REASON TO EXPECT THAT THEY WOULD BE REQUIRED. IN THIS REGARD, WE WOULD DRAW ATTENTION TO THE PARTICULARS OF THE APPLICANTS' CHARGES WHEREIN IT IS ALLEGED THAT EIGHT PERSONS WHO SIGNED APPLICATIONS FOR MEMBERSHIP IN THE RESPONDENT AND PAID ONE DOLLAR INITIATION FEE TO LAFRENIERE GAVE THE APPLICATIONS TO THE CLERK IN THE OFFICE OF THE INTERVENER AND THEY WERE THEREUPON HIRED.

20. IN THESE CIRCUMSTANCES, THOMAS WHO WAS CALLED TO TESTIFY BY HIS OWN COUNSEL AND QUESTIONED BY HIM CONCERNING THE ORGANIZING CAMPAIGN OF THE RESPONDENT SURELY MUST HAVE ANTICIPATED THAT HE WOULD BE ASKED TO ACCOUNT FOR THE APPLICATIONS FOR MEMBERSHIP IN LIGHT OF THE ALLEGATIONS OF THE APPLICANTS. WHAT WAS DONE WITH THE APPLICATIONS FOR MEMBERSHIP SIGNED BY THE EMPLOYEES WHO WERE HIRED ON THE JOB AND JOINED THE RESPONDENT UNION FORMS THE CORE OF THE APPLICANTS' CHARGES. THE FAILURE OF THOMAS TO PRODUCE THOSE APPLICATIONS FOR MEMBERSHIP WHICH HE CLAIMED TO HAVE IN HIS POSSESSION TENDS TO MAKE THE RESPONDENT'S DENIAL OF THE CHARGES LESS

CONVINCING THAN THEY OTHERWISE MIGHT HAVE BEEN. HAD HE PRODUCED THE ORIGINAL WHITE APPLICATIONS FOR MEMBERSHIP AND THE YELLOW COPIES "INTACT", IT WOULD HAVE REFUTED THE TESTIMONY OF THE EIGHT EMPLOYEES THAT THEY GAVE THE ORIGINALS OF THE APPLICATIONS FOR MEMBERSHIP WHICH THEY SIGNED TO THE OFFICE CLERK. ON THE OTHER HAND, IF THOMAS HAD PRODUCED JUST THE ORIGINAL SEPARATED APPLICATIONS FOR MEMBERSHIP, SUCH EVIDENCE WOULD HAVE BEEN OPEN TO THE INTERPRETATION THAT THE APPLICATIONS, IN FACT, HAD BEEN MAILED DIRECTLY TO HIM BY LAFRENIERE AND LAROUCHE. ALTERNATIVELY, SUCH EVIDENCE WOULD BE OPEN TO THE INTERPRETATION THAT THE OFFICE CLERK OR SOME OTHER MEMBER OF MANAGEMENT OF THE INTERVENER RETURNED THE APPLICATIONS FOR MEMBERSHIP TO THOMAS. BE THAT AS IT MAY, THE SAID APPLICATIONS FOR MEMBERSHIP ARE NOT IN EVIDENCE BEFORE US.

21. IN ANY EVENT, AS A RESULT OF THOMAS' FAILURE TO PRODUCE THE APPLICATIONS, WE CANNOT HELP HAVING SOME DOUBTS CONCERNING THE RELIABILITY OF HIS EVIDENCE. AS WELL, DOUBT IS ALSO CAST ON THE TESTIMONY OF LAFRENIERE, LAROUCHE AND LEROUX. FURTHER, THE CONFLICT BETWEEN THE EVIDENCE OF LAFRENIERE AND LEROUX OVER THE SIMPLE MATTER AS TO WHETHER THEY WERE IN THE SAME AUTOMOBILE TRAVELLING FROM OTTAWA TO HEARST IS HARDLY REASSURING. MOREOVER, THE APPARENT EASE WITH WHICH A PICK-UP TRUCK WAS MADE AVAILABLE TO LAFRENIERE, AN ORDINARY EMPLOYEE WHO ALSO HAPPENED TO BE THE MAIN ORGANIZER FOR THE RESPONDENT UNION, SEEMS TO US IS OPEN TO INFERENCES THAT TEND TO SUPPORT THE CHARGES OF THE APPLICANTS. AS WELL, LEROUX WAS UNABLE TO OFFER ANY PLAUSIBLE EXPLANATION FOR THE DEDUCTION OF UNION DUES. BY WAY OF CONTRAST, WE FOUND NO SUCH INCONSISTENCIES IN THE EVIDENCE OF THE EIGHT PERSONS CALLED AS WITNESSES BY COUNSEL FOR THE APPLICANTS, OTHER THAN DISCREPANCIES AS TO THE DATE ON WHICH A COUPLE OF THEM SIGNED AN APPLICATION FOR MEMBERSHIP IN THE RESPONDENT. HAVING CONSIDERED ALL OF THE EVIDENCE, WE PREFER THE TESTIMONY OF THE EIGHT EMPLOYEES OVER THAT OF THE WITNESSES CALLED BY THE RESPONDENT AND THE INTERVENER. WE ACCORDINGLY FIND A CONSISTENT PATTERN OF COLLUSIVE BEHAVIOUR ON THE PART OF REPRESENTATIVES OF THE RESPONDENT AND INTERVENER. IT IS OUR CONCLUSION THAT BY PRE-ARRANGEMENT IT WAS AGREED BETWEEN THE MANAGEMENT OF THE INTERVENER AND THE RESPONDENT THAT ANY PERSON HIRED TO WORK ON THE NOTRE DAME HOSPITAL CONSTRUCTION PROJECT AT HEARST WOULD BE REQUIRED TO JOIN THE RESPONDENT UNION AS A CONDITION OF HIS EMPLOYMENT. WE FIND ON THE EVIDENCE THAT BERNARD, LEROUX AND LAROUCHE IMPLEMENTED THIS POLICY ON BEHALF OF THE INTERVENER AND THAT LAFRENIERE AND LAROUCHE AS WELL DID SO ON BEHALF OF THE RESPONDENT UNION. THE QUESTION WHICH THE BOARD MUST NOW DETERMINE IS WHETHER OR NOT THE ABOVE CONDUCT OF THE RESPONDENT AND THE INTERVENER CONSTITUTES FRAUD WITHIN THE MEANING OF SECTION 44 OF THE ACT.

22. THE BOARD HAS REVIEWED LEADING CASES DEALING WITH THE QUESTION AS TO WHAT CONSTITUTES FRAUD AT COMMON LAW AND THE CIRCUM-

STANCES UNDER WHICH THE COURTS WILL SET ASIDE JUDGMENTS (SEE DERRY V. PEEK (1889) 14 A.C. 337; REX V. CLEMENT (1914) 6 W.W.R. 414; HIP FOONG HONG V. H. NEOTIA AND COMPANY (1918) A.C. 888; MACDONALD V. PIER (1923) S.C.R. 107; REED V. GEORGE E. SHNIER & COMPANY (1938) OWN 501; MEEK V. FLEMING (1961) 3 All E.R. 148; REGINA EX REL RETAIL WHOLESALE AND DEPARTMENT STORE UNION ET AL. V. LABOUR RELATIONS BOARD (SASK.) AND MAIN 69 CLLC 759). THE BOARD HAS ALSO REVIEWED ITS OWN DECISIONS RELATING TO THE SAME SUBJECT MATTER (SEE WINDSOR BEVERAGES CASE 52 CLLC 1427; WEBSTER AIR EQUIPMENT 58 CLLC 1716; COLLINGWOOD SHIPYARDS CASE OLRB M.R. JUNE 1967 246).

23. THE MEANING OF FRAUD IN THE COMMON LAW IS DEFINED BY LORD HERSCHELL IN DERRY V. PEEK (SUPRA) IN THE FOLLOWING TERMS AT 374:

FIRST, IN ORDER TO SUSTAIN AN ACTION OF DECEIT, THERE MUST BE PROOF OF FRAUD, AND NOTHING SHORT OF THAT WILL SUFFICE. SECONDLY, FRAUD IS PROVED WHEN IT IS SHOWN THAT A FALSE REPRESENTATION HAS BEEN MADE (1) KNOWINGLY, OR (2) WITHOUT BELIEF IN ITS TRUTH, OR (3) RECKLESSLY, CARELESS WHETHER IT BE TRUE OR FALSE. ALTHOUGH I HAVE TREATED THE SECOND AND THIRD AS DISTINCT CASES, I THINK THE THIRD IS BUT AN INSTANCE OF THE SECOND, FOR ONE WHO MAKES A STATEMENT UNDER SUCH CIRCUMSTANCES CAN HAVE NO REAL BELIEF IN THE TRUTH OF WHAT HE STATES. TO PREVENT A FALSE STATEMENT BEING FRAUDULENT, THERE MUST, I THINK, ALWAYS BE AN HONEST BELIEF IN ITS TRUTH. AND THIS PROBABLY COVERS THE WHOLE GROUND, FOR ONE WHO KNOWINGLY ALLEGES THAT WHICH IS FALSE, HAS OBVIOUSLY NO SUCH HONEST BELIEF. THIRDLY, IF FRAUD BE PROVED, THE MOTIVE OF THE PERSON GUILTY OF IT IS IMMATERIAL. IT MATTERS NOT THAT THERE WAS NO INTENTION TO CHEAT OR INJURE THE PERSON TO WHOM THE STATEMENT WAS MADE.

24. COUNSEL FOR THE APPLICANTS SUBMITS THAT SECTION 10 AND SECTION 44 OF THE ACT HAVE THE SAME ULTIMATE EFFECT. ACCORDING TO COUNSEL, THE DIFFERENCE BETWEEN THE TWO SECTIONS IS ONLY THAT THE FORMER PRECLUDES THE BOARD FROM CERTIFYING AN APPLICANT TRADE UNION IF CERTAIN FACTS ARE KNOWN AND THE LATTER PERMITS THE BOARD TO VITIATE A CERTIFICATE IF THE SAME FACTS EXISTED BUT WERE NOT KNOWN TO THE BOARD UNTIL SOME TIME SUBSEQUENT TO THE ISSUING OF THE CERTIFICATE. COUNSEL ARGUES THAT IF THESE FACTS WOULD HAVE PRECLUDED THE BOARD FROM ORIGINALLY CERTIFYING THE RESPONDENT BY REASON OF SECTION 10, THEN THE SAME FACTS AMOUNT TO FRAUD UNDER SECTION 44.

25. WE FIND ON THE EVIDENCE THAT THE COLLUSIVE ARRANGEMENT EN-

TERED INTO BY THE INTERVENER WITH THE RESPONDENT TO ORGANIZE THE INTERVENER CONSTITUTES SUPPORT FOR THE RESPONDENT WITHIN THE MEANING OF SECTION 10 OF THE ACT. WE DO NOT, HOWEVER, ACCEPT THE ARGUMENT OF COUNSEL FOR THE APPLICANTS THAT A VIOLATION OF SECTION 10 BY AN EMPLOYER IPSO FACTO MEANS THAT THE TRADE UNION THAT HAS SECURED A CERTIFICATE FROM THE BOARD HAS BEEN GUILTY OF FRAUD. IN OUR VIEW, WHETHER OR NOT THIS IS SO WILL DEPEND ON THE CIRCUMSTANCES OF EACH CASE.

26. WITH REFERENCE TO THE EVIDENCE BEFORE US IN THE INSTANT CASE, THE NON-DISCLOSURE TO THE BOARD BY THE RESPONDENT OF THE ORGANIZING METHODS IT EMPLOYED IN SECURING MEMBERSHIP AMONG EMPLOYEES OF THE INTERVENER DOES NOT FALL WITHIN THE PURVIEW OF FRAUD AS DEFINED IN THE COMMON LAW. ON THE OTHER HAND, THE COLLUSIVE CONDUCT OF THE RESPONDENT AND THE INTERVENER HAD THE EFFECT OF DENYING TO THOSE PERSONS WHOM THE INTERVENER HIRED ON THE PROJECT A BASIC RIGHT GUARANTEED UNDER THE ACT. MORE SPECIFICALLY, SECTION 3 OF THE ACT GUARANTEES THAT EVERY PERSON IS FREE TO JOIN A TRADE UNION OF HIS OWN CHOICE. HAD THE BOARD BEEN AWARE THAT THE EMPLOYEES FOR WHOM THE RESPONDENT WAS CERTIFIED AS BARGAINING AGENT HAD BEEN COMPELLED TO JOIN THE RESPONDENT AS A CONDITION OF BEING HIRED ON THE INTERVENER'S PROJECT AT HEARST, WE ARE CONFIDENT THAT THE BOARD WOULD NOT HAVE ISSUED THE CERTIFICATE DATED APRIL 23, 1970 TO THE RESPONDENT.

27. THE TACTICS USED BY THE RESPONDENT TO SECURE THE EVIDENCE OF MEMBERSHIP WHICH IT SUBMITTED IN SUPPORT OF ITS APPLICATION FOR CERTIFICATION ARE REPUGNANT TO THE ENTIRE PURPOSE AND SCHEME OF THE ACT. IN LIGHT OF THE FACT THAT THE RESPONDENT OBTAINED A CERTIFICATE BASED ON EVIDENCE OF MEMBERSHIP SECURED IN THE MANNER IN WHICH IT WAS, IN OUR OPINION, AMOUNTED TO FRAUD WITHIN THE MEANING OF SECTION 44 OF THE ACT. WE ACCORDINGLY FIND THAT THE INSTANT APPLICATION WAS PROPERLY UNDER THAT SECTION OF THE ACT. IN THE RESULT, THE BOARD DECLARES THAT THE RESPONDENT NO LONGER REPRESENTS THE EMPLOYEES OF THE INTERVENER IN THE BARGAINING UNIT DESCRIBED IN THE BOARD'S CERTIFICATE DATED APRIL 23, 1970.

DECISION OF BOARD MEMBER J.E.C. ROBINSON, Q.C.: MARCH 4, 1971.

IT IS NOT MY INTENTION TO SET FORTH ALL OF THE EVIDENCE WHICH WE HEARD, NOR TO REPEAT THE LENGTHY AND ABLE WRITTEN ARGUMENTS WHICH WERE FORWARDED TO THE BOARD IN SUPPORT OF THE RESPECTIVE POSITIONS OF THE PARTIES.

IT WILL SUFFICE THAT I SAY THAT HAVING REGARD TO THE EVIDENCE GIVEN BY THE REPRESENTATIVES OF THE RESPONDENT UNION AND THE INTERVENING COMPANY, AND THE DEMEANOUR OF SUCH REPRESENTATIVES IN THE WITNESS

BOX, I ACCEPT THEIR EVIDENCE OVER THAT EVIDENCE TENDERED BY THE APPLICANTS.

IN MY OPINION IT IS NOT A MATTER OF PREFERRING THE EVIDENCE OF THE UNION AND THE COMPANY TO THAT OF THE APPLICANT EMPLOYEES, FOR TO REJECT SUCH EVIDENCE IS TO SAY THAT THE UNION AND COMPANY WITNESSES ARE OUTRIGHT LIARS. THE CONVERSE IS NOT NECESSARILY TRUE HAVING REGARD TO THE TYPE OF EVIDENCE SUBMITTED BY THE APPLICANT EMPLOYEES.

BE THAT AS IT MAY, HOWEVER, I ACCEPT THE EVIDENCE OF THE WITNESSES FOR THE UNION AND THE COMPANY AND ON SUCH BASIS WOULD, THEREFORE, DISMISS THIS APPLICATION.

I AM UNABLE TO LEAVE THE MATTER, HOWEVER, WITHOUT COMMENTING ON THE DECISION OF MY COLLEAGUES WHO ACCEPTED THE EVIDENCE OF THE APPLICANT EMPLOYEES IN THIS MATTER.

IN COMMENTING ON THEIR ULTIMATE CONCLUSIONS AND THEIR DISPOSITION OF THIS CASE, I DO NOT INTEND TO COMMENT ON THE FACT THAT THEY VIEWED THE EVIDENCE GIVEN IN A DIFFERENT LIGHT THAN DID I. IT IS NOT THEIR DETERMINATION OF THE FACTS, BUT RATHER THEIR INTERPRETATION OF THE LAW, WITH WHICH I RESPECTFULLY DO NOT AGREE.

WHEN THE APPLICANTS INITIATED THEIR APPLICATION IN THIS MATTER ALLEGING A VIOLATION OF SECTION 44 OF THE LABOUR RELATIONS ACT, THEY SET FORTH CERTAIN PARTICULARS IN SUPPORT OF THEIR ALLEGATIONS. AS I UNDERSTAND THE JUDGMENT OF MY COLLEAGUES, THEY CONCLUDE, AFTER HEARING THE EVIDENCE, THAT SUCH PARTICULARS HAVE BEEN PROVEN.

IN AN INTERIM DECISION IN THIS CASE, REPORTED IN SEPTEMBER 1970 MONTHLY REPORT P. 673, MY COLLEAGUES IN THEIR MAJORITY DECISION SAID AT PAGE 677:

11. ANY ALLEGED VIOLATION OF SECTION 10 OF THE ACT IN THE SECURING OF A CERTIFICATE CAN ONLY BE DEALT WITH BY THE DIVISION OF THE BOARD THAT HEARD THE APPLICATION, UPON A REQUEST FOR RECONSIDERATION. BASED ON THE ALLEGATIONS OF THE APPLICANTS, IT NEVERTHELESS MAY BE THAT THE RESPONDENT TRADE UNION OBTAINED THE CERTIFICATE OF APRIL 23, 1970 BY FRAUD. THE BOARD IS NOT IN A POSITION, HOWEVER, TO MAKE SUCH A DETERMINATION UNTIL IT HAS HEARD THE EVIDENCE IN SUPPORT OF THE ALLEGATIONS AND ANY EVIDENCE ADDUCED BY THE RESPONDENT AND/OR INTERVENER IN DEFENCE OF THE CHARGES. ACCORDINGLY, NOTWITHSTANDING THE LAPSE OF TIME ON THE PART OF THE APPLI-

CANTS IN MAKING THE INSTANT APPLICATION AND CHARGES, THE BOARD IS OF THE OPINION THAT IN THE CIRCUMSTANCES IT SHOULD ENTERTAIN THEM. IN ARRIVING AT THIS CONCLUSION, WE ARE NOT UNMINDFUL OF A NUMBER OF DECISIONS WHERE THE BOARD HAS DECLINED TO ENTERTAIN ALLEGATIONS OF UNFAIR LABOUR PRACTICES WHEN THE ALLEGATIONS HAVE BEEN FILED LATE. THE DISTINCTION BETWEEN THOSE CASES AND THE INSTANT ONE, HOWEVER, IS THAT IN THE PRESENT CASE, UNLIKE THE OTHERS, IT IS SUBMITTED THAT THE UNFAIR LABOUR PRACTICES AMOUNT TO FRAUD UPON THE BOARD. FURTHER, WE ARE SATISFIED THAT IF THE EVIDENCE SUBSTANTIATES THE ALLEGATIONS, A FINDING OF FRAUD MAY BE WARRANTED.

(THE UNDERLINING IS MY OWN)

I WOULD HAVE THOUGHT, HAVING READ THE ABOVE CITED PORTION OF THE MAJORITY JUDGMENT IN THE INTERIM DECISION THAT WHEN MY COLLEAGUES WERE CONSIDERING THE QUESTION OF "FRAUD" IN THE CONTEXT OF SECTION 44, THEY WERE DOING SO BASED ON THE COMMON LAW DEFINITION OF SUCH WORD. INDEED, IT IS MY OPINION THAT THE LEGISLATURE WAS CONSIDERING IT IN THAT CONTEXT WHEN THE LEGISLATION WAS DRAFTED; OTHERWISE IT WOULD HAVE BEEN MORE EXPLICIT IN SETTING OUT THE VARIED INTERPRETATION WHICH MY COLLEAGUES NOW PLACE UPON THE WORD.

I, TOO, HAVE REVIEWED THE CASES IN THE COURTS DEALING WITH THE QUESTION AS TO WHAT CONSTITUTES "FRAUD" AND THE CIRCUMSTANCES UNDER WHICH THE COURTS WILL SET ASIDE JUDGMENTS.

IN MY OPINION, HOWEVER, WHAT THE APPLICANTS ARE ASKING THIS PANEL OF THE BOARD TO DO IS TO SIT IN JUDGMENT UPON THE DECISION OF THE ORIGINAL PANEL WHICH HEARD THE APPLICATION FOR CERTIFICATION AND TO SET ASIDE THE FINDING OF THAT PANEL BECAUSE THERE HAS BEEN EMPLOYER SUPPORT WITHIN THE MEANING OF SECTION 10 OF THE LABOUR RELATIONS ACT. THIS, IN MY OPINION, IS THE BASIS ON WHICH THIS APPLICATION IS MADE, AND SECTION 44 SHOULD NOT BE USED TO CIRCUMVENT THE PROPER PROCEDURE IN PROVING SUPPORT WITHIN THE MEANING OF SECTION 10 OF THE LABOUR RELATIONS ACT.

THE LATTER MAY ONLY BE FOUND BY WAY OF A RECONSIDERATION OF THE DECISION OF AND BY THE ORIGINAL PANEL OR BY BRINGING AN APPLICATION CLAIMING VIOLATION OF THE ACT WITHIN THE MEANING OF SECTION 10, BUT NOT BY THE MANNER RESORTED TO IN THIS CASE.

INDEED, I AM NOT AS CONFIDENT, AS ARE MY COLLEAGUES, THAT THE BOARD WOULD NOT HAVE ISSUED THE CERTIFICATE DATED APRIL 23, 1970, HAVING REGARD TO THE REASONS GIVEN BY THE BOARD IN ITS EARLIER DECISIONS IN ACME RULER COMPANY LIMITED CASE NOVEMBER 1969 MONTHLY REPORT P. 952 AND

THE AIR LIQUIDE CASE (1964) 3 CLLC 16,002.

IN MY RESPECTFUL OPINION, WHEN "FRAUD" WAS SET FORTH IN SECTION 44 OF THE ACT, THE LEGISLATURE WAS REFERRING TO THE ACCEPTED LEGAL MEANING OF "FRAUD" AS DEFINED IN THE COURTS, AND THAT SOMETHING LESS THAN FRAUD MAY WELL BE COVERED BY SECTION 10.

THERE HAS BEEN NO FRAUD COMMITTED UPON ME, OR THE OTHER MEMBERS OF THE PANEL WITH WHOM I AM SITTING, AND I AM NOT PREPARED TO SIT AS AN APPEAL PANEL UPON MY COLLEAGUES WHO GRANTED CERTIFICATION ON APRIL 23, 1970. IN MY OPINION, TO SUCCEED, RESORT MUST BE HAD TO THAT ORIGINAL PANEL TO DETERMINE WHETHER THE UNION WAS INCORRECTLY CERTIFIED, HAVING REGARD TO THE JURISPRUDENCE RELATING TO SECTION 10 OF THE LABOUR RELATIONS ACT.

IN CONCLUSION, I MUST SAY THAT BY THIS DECISION, THE MAJORITY WOULD SEEM TO PROHIBIT SUCH WIDELY ACCEPTED PRACTICES AS THE USE BY COMPANIES OF UNION "HIRING HALLS" AND THE CO-OPERATION WHICH HAS GROWN UP BETWEEN COMPANIES AND UNIONS, WHEREIN, UPON REQUEST BY THE COMPANY, A UNION WILL SUPPLY CERTAIN OF ITS MEMBERS TO PERFORM THE JOB REQUIREMENTS OF THE REQUESTING COMPANY. I FIND THE DECISION OF THE MAJORITY TO BE SOMEWHAT AT VARIANCE WITH THIS ACCEPTED PRACTICE.

18883-70-R: THE CANADIAN UNION OF INDUSTRIAL WORKERS (APPLICANT) V. GILBARCO EMPLOYEES' UNION (RESPONDENT) V. GILBARCO CANADA LTD. (INTERVENER).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS J.D. BELL AND O. HODGES.

APPEARANCES AT THE HEARING: ARNOLD BAKER, DOUG MCLEAN, SIDNEY CONRON AND E.G. POSEN FOR THE APPLICANT; D.C. FRASER, GARRY BENNETT, RAY ELLIOTT AND JOHN CIRNE FOR THE RESPONDENT; C.R. OSLER, Q.C., R.P. MILLER AND J.A. COOK FOR THE INTERVENER.

DECISION OF THE BOARD: MARCH 25, 1971.

. . .

2. THIS IS AN APPLICATION FOR TERMINATION PURSUANT TO SECTION 45A(1) OF THE LABOUR RELATIONS ACT. THE HISTORY OF THE BARGAINING RELATIONSHIP IS A RELEVANT CONSIDERATION IN THIS APPLICATION. ON APRIL 15, 1947, AS THE RESULT OF A PETITION UNDER THE WARTIME LABOUR RELATIONS REGULATIONS BY THE GILBARCO EMPLOYEES' UNION AND IN ACCORDANCE WITH THE PRACTICE AT THAT TIME, CERTAIN NAMED PERSONS WERE CERTIFIED AS BARGAINING REPRESENTATIVES FOR A UNIT OF EMPLOYEES OF GILBERT & BARBER MANUFACTURING COMPANY LIMITED. THAT COMPANY SUB-

SEQUENTLY CHANGED ITS NAME TO GILBARCO CANADA LTD., THE INTERVENER IN THE INSTANT APPLICATION.

3. IN 1944, THE LABOUR RELATIONS BOARD ACT, 1944, AUTHORIZED THE APPLICATION OF THE WARTIME LABOUR RELATIONS REGULATIONS MADE UNDER THE WAR MEASURES ACT (CANADA) TO CERTAIN EMPLOYERS AND EMPLOYEES IN ONTARIO. IT WAS PURSUANT TO THE ACT OF 1944 AND THE WARTIME LABOUR RELATIONS REGULATIONS INCORPORATED INTO THAT ACT THAT THE CERTIFICATE WAS GRANTED ON APRIL 15, 1947. UNDER THE LABOUR RELATIONS ACT, 1948, SECTION 11(1) WHERE COLLECTIVE BARGAINING REPRESENTATIVES WERE CERTIFIED UNDER THE LABOUR RELATIONS BOARD ACT, 1944, THE TRADE UNION WHICH PETITIONED FOR THE CERTIFICATION WAS DEEMED TO HAVE BEEN CERTIFIED AS THE BARGAINING AGENT FOR THE UNIT OR GROUP OF EMPLOYEES SPECIFIED IN THE CERTIFICATE ISSUED BY THE BOARD, AS OF THE DATE OF SUCH CERTIFICATION, AND THE CERTIFICATION WAS DEEMED TO HAVE THE SAME EFFECT AS IF THE LABOUR RELATIONS ACT, 1948 HAD BEEN IN FORCE PRIOR THERETO. SECTION 11(1) OF THE 1948 ACT WAS AS FOLLOWS:

11.-(1) THE LABOUR RELATIONS BOARD ACT, 1944, THE LABOUR RELATIONS BOARD AMENDMENT ACT, 1946, AND THE LABOUR RELATIONS BOARD ACT, 1947, ARE REPEALED, BUT FOR THE PURPOSES OF THIS ACT WHERE COLLECTIVE BARGAINING REPRESENTATIVES ARE CERTIFIED UNDER THE LABOUR RELATIONS BOARD ACT, 1944, EITHER BEFORE OR AFTER THE COMING INTO FORCE OF THIS ACT, THE TRADE UNION OR EMPLOYEES' ORGANIZATION WHICH PETITIONED FOR THE CERTIFICATION OF SUCH BARGAINING REPRESENTATIVES SHALL BE DEEMED TO HAVE BEEN CERTIFIED AS THE BARGAINING AGENCY FOR THE UNIT OR GROUP OF EMPLOYEES SPECIFIED IN THE CERTIFICATE ISSUED BY THE BOARD AS OF THE DATE OF SUCH CERTIFICATION, AND SUCH CERTIFICATION SHALL BE DEEMED TO HAVE THE SAME EFFECT AS IF THIS ACT HAD BEEN IN FORCE PRIOR THERETO.

ACCORDINGLY, THE GILBARCO EMPLOYEES' UNION WAS DEEMED TO BE THE BARGAINING AGENT UNDER THE CERTIFICATE OF APRIL 15, 1947.

4. THE BARGAINING UNIT WHICH THE BOARD FOUND TO BE APPROPRIATE AT THAT TIME WAS "AN ALL EMPLOYEE UNIT" WITH CERTAIN EXCEPTIONS WHICH ARE NOT MATERIAL. THE BARGAINING UNIT CONTAINED NO GEOGRAPHIC LIMITATION AND PRESUMABLY THOSE BARGAINING RIGHTS EXTENDED TO ANY OPERATION CARRIED ON BY THE COMPANY WITHIN ONTARIO.

5. THE PARTIES SUBSEQUENTLY CARRIED ON A COLLECTIVE BARGAINING RELATIONSHIP WHICH MANIFESTED ITSELF IN A SUCCESSION OF COLLECTIVE AGREEMENTS. THE COLLECTIVE AGREEMENT ENTERED INTO ON MAY 15, 1968 BETWEEN THE COMPANY AND THE UNION RECOGNIZED THE UNION "AS THE SOLE

AGENCY TO REPRESENT ALL ELIGIBLE EMPLOYEES WITHIN THE METROPOLITAN TORONTO AND THE SURROUNDING AREA WITHIN TWENTY-FIVE MILES FROM THE BOUNDARIES OF METROPOLITAN TORONTO". IT APPEARS THEREFORE THAT THE PARTIES CHOSE TO ENGRAFT A GEOGRAPHIC LIMITATION ON THE BARGAINING RIGHTS NOTWITHSTANDING THE ABSENCE OF ANY SUCH LIMITATION IN THE ORIGINAL CERTIFICATE. THAT THE PARTIES WERE AWARE OF THE ORIGINAL CERTIFICATE IS DEMONSTRATED BY ITS RECITAL IN THE PREAMBLE TO THE 1968 COLLECTIVE AGREEMENT.

6. DURING THE YEAR 1969 THE COMPANY MOVED ITS OPERATIONS TO BROCKVILLE AND ON FEBRUARY 16, 1970 IT ENTERED INTO A COLLECTIVE AGREEMENT FOR A PERIOD OF TWO YEARS WITH WHAT PURPORTS TO BE THE GILBARCO EMPLOYEES' UNION. IT IS THIS AGREEMENT WHICH IS PRESENTLY BEING ATTACKED. THE AGREEMENT RECITES BOTH THE ORIGINAL AND THE PREVIOUS AGREEMENT AND RECOGNIZES THE UNION "AS THE SOLE AGENCY TO REPRESENT ALL ELIGIBLE EMPLOYEES EMPLOYED AT ITS BROCKVILLE PLANT...".

7. AT THIS JUNCTURE IT IS PERHAPS NECESSARY TO COMMENT ON THE GEOGRAPHIC NATURE OF BARGAINING RIGHTS. IT IS PRESENTLY THE PRACTICE OF THIS BOARD TO GRANT CERTIFICATES WITH A GEOGRAPHIC RESTRICTION ON BARGAINING RIGHTS. THE RIGHTS THEREBY GRANTED COMPEL THE PARTIES TO MEET, BARGAIN IN GOOD FAITH AND MAKE EVERY REASONABLE EFFORT TO MAKE A COLLECTIVE AGREEMENT. THE LABOUR RELATIONS ACT, SECTION 12. IT IS NOT INCUMBENT UPON THE PARTIES TO INCORPORATE INTO THEIR COLLECTIVE AGREEMENT THE BARGAINING RIGHTS CONTAINED IN THE CERTIFICATE GRANTED BY THIS BOARD WITH THE GEOGRAPHIC LIMITATION. THE PARTIES ARE FREE TO AMEND, ALTER, EXTEND OR ABRIDGE THE BARGAINING RIGHTS CONTAINED IN THE CERTIFICATE. WHERE BARGAINING RIGHTS IN A COLLECTIVE AGREEMENT ARE NOT AS EXTENSIVE AS THOSE CONTAINED IN A CERTIFICATE, THEN THAT IS PRIMA FACIE EVIDENCE OF AN ABANDONMENT OF THAT PORTION OF THE BARGAINING RIGHTS CONTAINED IN THE CERTIFICATE, BUT NOT CONTAINED IN THE COLLECTIVE AGREEMENT. IN EFFECT THE COLLECTIVE AGREEMENT SUPPLANTS THE RIGHTS GIVEN BY THE BOARD'S CERTIFICATE AND THE BOARD'S CERTIFICATE IS SPENT ONCE THE COLLECTIVE AGREEMENT IS SIGNED. OR TO PUT IT ANOTHER WAY THE BEST EVIDENCE OF THE BARGAINING RIGHTS EXTANT ARE THOSE THAT ARE CONTAINED IN THE COLLECTIVE AGREEMENT. IN THE SAME WAY AS BARGAINING RIGHTS IN A COLLECTIVE AGREEMENT SUPPLANT BARGAINING RIGHTS CONTAINED IN A CERTIFICATE SO TOO BARGAINING RIGHTS IN SUBSEQUENT COLLECTIVE AGREEMENTS MAY SUPPLANT BARGAINING RIGHTS CONTAINED IN PRIOR COLLECTIVE AGREEMENTS.

8. APPLYING THOSE CONSIDERATIONS TO THE PRESENT CASE, WE ARE SATISFIED THAT THE BARGAINING RIGHTS OF THE GILBARCO EMPLOYEES' UNION ARE DEFINED IN THE MAY 15, 1968 COLLECTIVE AGREEMENT AND ARE LIMITED TO METROPOLITAN TORONTO AND THE SURROUNDING AREA, AND IN THE ABSENCE OF ANY OTHER EVIDENCE INDICATING THE PRESERVATION OF BARGAINING RIGHTS BEYOND METROPOLITAN TORONTO AND THE SURROUNDING AREA, WE ARE UNABLE TO CONCLUDE THAT THE GILBARCO EMPLOYEES' UNION HAS BARGAINING RIGHTS WHICH

EXTEND BEYOND THAT AREA. IT FOLLOWS THEREFORE, THAT THE BARGAINING RIGHTS CONTAINED IN THE AGREEMENT DATED FEBRUARY 16, 1970, ARE THE RESULT OF VOLUNTARY RECOGNITION AND ACCORDINGLY THIS IS A PROPER APPLICATION UNDER SECTION 45A(1) BECAUSE IT APPEARS THAT ANY BARGAINING RIGHTS CONCERNING BROCKVILLE WHICH MIGHT HAVE ATTACHED TO THE CERTIFICATE ISSUED ON APRIL 15, 1947, HAVE BEEN ABANDONED BY THE PARTIES AND THEREFORE NEITHER THE TRADE UNION NOR THE EMPLOYER CAN CLAIM THAT THIS TRADE UNION WAS CERTIFIED AS THE BARGAINING AGENT FOR A BARGAINING UNIT OF EMPLOYEES AT BROCKVILLE, SO AS TO BAR AN APPLICATION UNDER SECTION 45A(1) WHICH PROVIDES AS FOLLOWS:

45A.-(1) WHERE AN EMPLOYER AND A TRADE UNION THAT HAS NOT BEEN CERTIFIED AS THE BARGAINING AGENT FOR A BARGAINING UNIT OF EMPLOYEES OF THE EMPLOYER ENTER INTO A COLLECTIVE AGREEMENT, THE BOARD MAY, UPON THE APPLICATION OF ANY EMPLOYEE IN THE BARGAINING UNIT OR OF A TRADE UNION REPRESENTING ANY EMPLOYEE IN THE BARGAINING UNIT, DURING THE FIRST YEAR OF THE PERIOD OF TIME THAT THE FIRST COLLECTIVE AGREEMENT BETWEEN THEM IS IN OPERATION, DECLARE THAT THE TRADE UNION WAS NOT, AT THE TIME THE AGREEMENT WAS ENTERED INTO, ENTITLED TO REPRESENT THE EMPLOYEES IN THE BARGAINING UNIT.

OF COURSE, A PREVIOUS BARGAINING RELATIONSHIP BETWEEN AN EMPLOYER AND A TRADE UNION MAY BE AN IMPORTANT FACTOR IN THE PARTICULAR CIRCUMSTANCES OF A CASE AFFECTING THE BOARD'S CONSIDERATION AND DISCRETION AS TO WHETHER IT SHOULD MAKE A DECLARATION UNDER SECTION 45A(1). HOWEVER, WE ARE OF THE OPINION THAT THIS IS THE FIRST COLLECTIVE AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE BROCKVILLE PLANT AND THE EMPLOYEES IN THAT BARGAINING UNIT.

9. THE APPLICANT'S MOST SERIOUS ATTACK ON THE BARGAINING RELATIONSHIP IS BASED ON THE FACTUAL MATTERS THAT HAVE ARISEN. IT APPEARS THAT WHEN THE COMPANY MOVED ITS OPERATIONS TO BROCKVILLE IT EXTENDED THE OPPORTUNITY TO MOVE TO ITS EMPLOYEES IN METROPOLITAN TORONTO. VERY FEW OF THOSE EMPLOYEES MOVED WITH THE COMPANY, BUT ONE WHO DID MOVE WAS MR. HART, THE SECRETARY-TREASURER OF THE UNION AT TORONTO.

10. THE EVIDENCE INDICATES THAT GILBARCO EMPLOYEES' UNION IN METROPOLITAN TORONTO HELD A MEETING IN MARCH 1969. AT THAT TIME IN VIEW OF THE COMPANY'S INTENDED MOVE TO BROCKVILLE IT WAS AGREED TO WAIT UNTIL MARCH 1970 TO DECIDE WHAT TO DO WITH THE MONEY IN THE TREASURY. IN MARCH 1970 THE MONEY WAS DIVIDED AMONG THE EXISTING

EMPLOYEES OF THE COMPANY IN METROPOLITAN TORONTO. THE EVIDENCE ALSO INDICATES THAT THE UNION CARRIED ON IN TORONTO UNTIL 1970, AND THAT THERE WAS NO FORMAL WINDING UP. THIS FACT OF PAYMENT IS RELIED UPON BY THE APPLICANT AS INDICATIVE OF A WINDING UP OF THE GILBARCO EMPLOYEES' UNION. THE CONSTITUTION OF THE GILBARCO EMPLOYEES' UNION APPEARS TO HAVE BEEN LOST AND SO THERE IS NO EVIDENCE BEFORE THIS BOARD AS TO THE APPROPRIATE PROCEDURE FOR WINDING UP THAT PARTICULAR UNION.

11. WHEN MR. HART ARRIVED IN BROCKVILLE, HE, WITH OTHER EMPLOYEES WHO HAD BEEN HIRED IN BROCKVILLE, HELD A MEETING ON NOVEMBER 17, 1969, TO CONSIDER THE ESTABLISHMENT OF A COLLECTIVE BARGAINING RELATIONSHIP WITH THE COMPANY. TO THAT END THEY CONSIDERED AFFILIATING WITH AN ESTABLISHED TRADE UNION, FORMING A NEW TRADE UNION, FORMING A LOCAL OF THE GILBARCO EMPLOYEES' UNION OR CONTINUING THE GILBARCO EMPLOYEES' UNION. IN ANY EVENT, AN EXECUTIVE COMMITTEE WAS ELECTED AS WELL AS A CHIEF STEWARD AND DEPARTMENTAL STEWARD. IT WAS ALSO AGREED THAT DUES WOULD BE DEDUCTED FROM THE PAYROLL AND THAT A BANK ACCOUNT BE OPENED. ANOTHER MEETING WAS HELD ON DECEMBER 15, 1969, COMPRISING A MAJORITY OF THE EMPLOYEES OF THE COMPANY AND A CONSTITUTION WAS ADOPTED BY THE PERSONS IN ATTENDANCE.

12. ON FEBRUARY 5, 1970, THE MAJORITY OF THE EMPLOYEES ATTENDED A MEETING OF WHAT PURPORTED TO BE THE GILBARCO EMPLOYEES' UNION WHERE A SERIES OF RESOLUTIONS WERE PASSED RELATING TO THE NEGOTIATION OF A COLLECTIVE AGREEMENT WITH THE COMPANY. SUBSEQUENTLY, A COLLECTIVE AGREEMENT WAS SIGNED AND PURSUANT TO ITS TERMS THE COMPANY AND THE EMPLOYEES OPERATED UNDER THE COLLECTIVE AGREEMENT AND THAT INCLUDED THE DEDUCTION OF UNION DUES BY THE COMPANY WHICH WERE REMITTED TO THE UNION WITHOUT OBJECTION BY THE EMPLOYEES.

13. THE APPLICANT SUBMITTED THAT THE BOARD SHOULD SET ASIDE THE COLLECTIVE AGREEMENT ON A NUMBER OF GROUNDS. FIRST, IT CONTENDS THAT THE GILBARCO EMPLOYEES' UNION WHICH WAS CERTIFIED IN 1947 HAS BEEN DISSOLVED AND IN SUPPORT OF THAT POSITION IT RELIES ON THE DIVISION OF UNION FUNDS AS A DE FACTO DISSOLUTION OF THE UNION. SECOND, IT SUBMITS THAT THE ENTITY AT BROCKVILLE IS NOT A TRADE UNION BECAUSE OF THE PROCEDURAL IRREGULARITIES IN ITS FORMATION. THIRD, IT SUBMITS THAT IF THERE WAS A TRADE UNION AT BROCKVILLE IT WAS NOT ENTITLED TO REPRESENT THE EMPLOYEES BECAUSE THE EMPLOYEES DID NOT BECOME MEMBERS OF THAT UNION AS THEY HAD PAID \$1.00, BUT DID NOT APPLY FOR MEMBERSHIP. THE INTERVENER NOW CLAIMS THAT INSOFAR AS IT WAS CONCERNED AT ALL MATERIAL TIMES IT DEALT WITH A TRADE UNION WHICH REPRESENTED TO THE COMPANY THAT IT WAS ENTITLED TO ACT FOR AND ON BEHALF OF THE EMPLOYEES AND THE COMPANY FURTHER SUBMITS THAT IT SHOULD NOT IN ANY WAY BE PREJUDICED BY ANY INTERNAL ARRANGEMENTS MADE BY THE GILBARCO EMPLOYEES'

UNION WITHOUT THE KNOWLEDGE OF THE COMPANY. THE RESPONDENT SUBMITS THAT THE TRADE UNION AT BROCKVILLE WAS A CONTINUATION OF THE GILBARCO EMPLOYEES' UNION AND AT THE TIME IT ENTERED INTO THE COLLECTIVE AGREEMENT IT WAS ENTITLED TO REPRESENT THE EMPLOYEES.

14. WE ARE UNABLE TO FIND THAT ON THE BALANCE OF PROBABILITIES THE GILBARCO EMPLOYEES' UNION AT BROCKVILLE WAS A CONTINUATION OR EXTENSION OF THE GILBARCO EMPLOYEES' UNION AT TORONTO. THE ONLY THREAD BETWEEN THE TWO ORGANIZATIONS IS MR. HART WHO WAS AN OFFICER OF BOTH ORGANIZATIONS AND THE SIMILARITY IN NAME. MR. HART'S EVIDENCE AS TO WHETHER THE GILBARCO EMPLOYEES' UNION AT BROCKVILLE WAS THE SAME ORGANIZATION AS AT TORONTO IS AMBIGUOUS AT BEST. HE INDICATED ON ONE OCCASION THAT THE GILBARCO EMPLOYEES' UNION AT BROCKVILLE WAS THE SAME UNION AND ON ANOTHER OCCASION THAT IT WAS A LOCAL. IF IT WAS A LOCAL OF THE GILBARCO EMPLOYEES' UNION IT WOULD NOT BE THE SAME UNION. HIS EVIDENCE DOES NOT SATISFY US THAT THE ORGANIZATION AT BROCKVILLE IS THE SAME ORGANIZATION THAT EXISTED AT TORONTO. OUR FINDING IN THIS REGARD DOES NOT MEAN THAT THE GILBARCO EMPLOYEES' UNION AT TORONTO HAS DISSOLVED, BUT RATHER THE EVIDENCE WAS NOT SUFFICIENT TO INDICATE THAT IT CONTINUED AT BROCKVILLE.

15. NOTWITHSTANDING OUR FINDING THAT THE GILBARCO EMPLOYEES' UNION AT BROCKVILLE IS NOT A CONTINUATION OF THE FORMER ORGANIZATION, IT APPEARS TO BE A TRADE UNION. IT IS AN ORGANIZATION FORMED FOR THE PURPOSE OF REGULATING RELATIONS BETWEEN AN EMPLOYER AND EMPLOYEE. IF IT HAD APPLIED TO BE CERTIFIED AND WAS REQUIRED TO PROVE ITS STATUS THERE WERE CERTAIN DEFICIENCIES DURING ITS FORMATIVE STAGE THAT MIGHT HAVE PRECLUDED THIS BOARD FROM GRANTING IT STATUS. HOWEVER, WE ARE SATISFIED THAT SUBSEQUENT EVENTS AND ACTS INCLUDING THE PARTICIPATION BY THE EMPLOYEES IN RATIFYING THE NEGOTIATIONS WITH THE COMPANY WERE SUFFICIENT TO CURE ANY IRREGULARITIES IN THE STATUS OF THE GILBARCO EMPLOYEES' UNION AT BROCKVILLE. WE THEREFORE FIND THAT THE GILBARCO EMPLOYEES' UNION AT BROCKVILLE IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(g) OF THE LABOUR RELATIONS ACT.

16. WHILE THE APPLICANT SUBMITTED THAT THERE WERE DEFICIENCIES IN THE MEMBERSHIP EVIDENCE OF THE GILBARCO EMPLOYEES' UNION, WE ARE OF THE OPINION THAT THE REQUIREMENTS OF SECTION 45A OF THE LABOUR RELATIONS ACT, DO NOT REQUIRE MEMBERSHIP. SECTION 45A SPEAKS OF REPRESENTATION AS OPPOSED TO SECTION 7 OF THE ACT WHICH REFERS TO MEMBERSHIP. THE OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 117 V. THE CANADIAN PLASTERERS' UNION V. TORONTO PLASTERING COMPANY LIMITED 1967 DECEMBER, OLRB MTHLY. REP. 879 AT 891. ACCORDINGLY, IN ASSESSING APPLICATIONS UNDER SECTION 45A THE REQUIREMENTS OF MEMBERSHIP WHICH OBTAIN IN APPLICATIONS FOR CERTIFICATION DO NOT OBTAIN ALTHOUGH MEMBERSHIP MAY BE SOME EVIDENCE OF REPRESENTATION.

17. IN THIS CASE A MAJORITY OF THE EMPLOYEES ATTENDED MEETINGS WHERE THEY SET UP THE GILBARCO EMPLOYEES' UNION, AND THEY ATTENDED MEETINGS WHERE THEY DISCUSSED THE BARGAINING RELATIONSHIP AND RATIFIED A PROPOSED COLLECTIVE AGREEMENT. IN THE FACE OF THOSE FACTS WE CAN ONLY CONCLUDE THAT THE GILBARCO EMPLOYEES' UNION AT ALL MATERIAL TIMES REPRESENTED THE EMPLOYEES AT BROCKVILLE.

18. THERE IS A FURTHER GROUND FOR REJECTING THIS APPLICATION WHICH FLOWS FROM EQUITY. THE FUNCTION OF SECTION 45A IS TO PROTECT EMPLOYEES BY ENABLING THIS BOARD TO SET ASIDE COLLECTIVE AGREEMENTS ENTERED INTO BY A TRADE UNION AND AN EMPLOYER IN A SITUATION WHERE THE TRADE UNION DOES NOT REPRESENT THE EMPLOYEES. THE SECTION ENVISONS PROTECTING THE RIGHTS OF EMPLOYEES TO JOIN A TRADE UNION OF THEIR OWN CHOICE AND TO HAVE THEIR CHOSEN TRADE UNION REPRESENT THEM IN COLLECTIVE BARGAINING. IN THIS CASE THE EMPLOYEES FREELY AND ACTIVELY SELECTED A TRADE UNION TO REPRESENT THEM AND PARTICIPATED IN THE PROCEDURES LEADING TO THE SIGNING OF A COLLECTIVE AGREEMENT. IN OUR VIEW SECTION 45A IS NOT INTENDED TO PROTECT THE EMPLOYEES IN THIS TYPE OF SITUATION. THERE IS NO EVIDENCE OF ANY MISREPRESENTATION OR FRAUD WHICH INDUCED THESE EMPLOYEES TO SET UP THE GILBARCO EMPLOYEES' UNION AND TO RATIFY THE COLLECTIVE AGREEMENT.

19. THE FACTS OF THIS CASE CLEARLY DEMONSTRATE THAT THE EMPLOYEES HAVE HELD OUT TO THE COMPANY A TRADE UNION THAT THEY PUT FORTH AS A DULY CONSTITUTED TRADE UNION AND HAVE INDUCED THE COMPANY TO ENTER INTO A COLLECTIVE AGREEMENT WITH THAT TRADE UNION. IT IS ALSO RELEVANT THAT THE COLLECTIVE AGREEMENT WHICH WAS ENTERED INTO IS NOT ONLY BINDING UPON THE EMPLOYER AND THE TRADE UNION, BUT IT IS ALSO BINDING UPON THE EMPLOYEES IN THE BARGAINING UNIT DEFINED IN THE AGREEMENT. THE LABOUR RELATIONS ACT, SECTION 37. THE EMPLOYEES WHO ARE BOUND BY THE COLLECTIVE AGREEMENT NOW SEEK TO TAKE ADVANTAGE OF THE IRREGULARITIES OR DEFICIENCIES OF THEIR OWN CONDUCT AND REPUDIATE THE COLLECTIVE AGREEMENT INDUCED BY THEIR ASSURANCES TO THE COMPANY. IN COMBE V. COMBE (1951) 2 K.B. 215; (1951) 1 All E.R. 767; DENNING, L.J., SAID:

"THE PRINCIPLE STATED IN THE HIGH TREES CASE ... DOES NOT CREATE NEW CAUSES OF ACTION WHERE NONE EXISTED BEFORE. IT ONLY PREVENTS A PARTY FROM INSISTING UPON HIS STRICT LEGAL RIGHTS, WHEN IT WOULD BE UNJUST TO ALLOW HIM TO ENFORCE THEM, HAVING REGARD TO THE DEALINGS WHICH HAVE TAKEN PLACE BETWEEN THE PARTIES. ... THE PRINCIPLE, AS I UNDERSTAND IT, IS THAT, WHERE ONE PARTY HAS, BY HIS WORDS OR CONDUCT, MADE TO THE OTHER A PROMISE OR ASSURANCE WHICH WAS INTENDED TO AFFECT THE LEGAL RELATIONS BETWEEN THEM AND TO BE ACTED ON ACCORDINGLY, THEN, ONCE

THE OTHER PARTY HAS TAKEN HIM AT HIS WORD AND ACTED ON IT, THE ONE WHO GAVE THE PROMISE OR ASSURANCE CANNOT AFTERWARDS BE ALLOWED TO REVERT TO THE PREVIOUS LEGAL RELATIONS AS IF NO SUCH PROMISE OR ASSURANCE HAD BEEN MADE BY HIM; BUT HE MUST ACCEPT THEIR LEGAL RELATIONS SUBJECT TO THE QUALIFICATION WHICH HE HIMSELF HAS SO INTRODUCED, EVEN THOUGH IT IS NOT SUPPORTED IN POINT OF LAW BY ANY CONSIDERATION BUT ONLY BY HIS WORD."

SEE ALSO TOOL METAL MANUFACTURING CO., LTD. V. TUNGSTEN ELECTRIC CO., LTD. (1955) 2 ALL E.R. 657 (HOUSE OF LORDS).

20. CONSIDERING THE PRINCIPLES ENUNCIATED BY DENNING, L.J., WE ARE OF THE OPINION THAT THE EMPLOYEES SHOULD BE PREVENTED FROM INSISTING ON ANY STRICT LEGAL RIGHTS THAT THEY MIGHT HAVE WHEN IT WOULD BE UNJUST TO ALLOW THEM TO ENFORCE THOSE RIGHTS HAVING REGARD TO THE DEALINGS THAT HAVE TAKEN PLACE BETWEEN THE PARTIES.

21. FOR ALL THESE REASONS THE APPLICATION IS DISMISSED.

18735-70-U: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. FIELDING LUMBER COMPANY LIMITED (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS J. D. BELL AND O. HODGES.

APPEARANCES AT THE HEARING: M. G. HORAN AND HUGH McDONALD FOR THE APPLICANT; TOM E. MAKI FOR THE RESPONDENT.

DECISION OF THE BOARD: MARCH 4, 1971.

1. THE APPLICANT HAS APPLIED TO THE BOARD FOR CONSENT TO INSTITUTE PROSECUTION AGAINST THE RESPONDENT FOR BREACH OF SECTION 50(A)(B)(C), SECTION 52 AND SECTION 59(1)(A) OF THE LABOUR RELATIONS ACT.

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3. THE PROVISIONS OF SECTION 59(1)(A) ARE AS FOLLOWS:

59(1) WHERE NOTICE HAS BEEN GIVEN UNDER SECTION 11 OR SECTION 40 AND NO COLLECTIVE AGREEMENT IS IN OPERATION, NO EMPLOYER SHALL, EXCEPT WITH THE CONSENT OF THE TRADE UNION, ALTER THE RATES OF WAGES OR ANY OTHER TERM OR CONDITION OF EMPLOYMENT OR ANY RIGHT, PRIVILEGE OR DUTY, OF THE EMPLOYER, THE

TRADE UNION OR THE EMPLOYEES, AND NO TRADE UNION SHALL, EXCEPT WITH THE CONSENT OF THE EMPLOYER, ALTER ANY TERM OR CONDITION OF EMPLOYMENT OR ANY RIGHT, PRIVILEGE OR DUTY OF THE EMPLOYER, THE TRADE UNION OR THE EMPLOYEES,

(A) UNTIL THE MINISTER HAS APPOINTED A CONCILIATION OFFICER OR A MEDIATOR UNDER THIS ACT AND,

(I) SEVEN DAYS HAVE ELAPSED AFTER THE MINISTER HAS RELEASED TO THE PARTIES THE REPORT OF A CONCILIATION BOARD OR MEDIATOR, OR

(II) FOURTEEN DAYS HAVE ELAPSED AFTER THE MINISTER HAS RELEASED TO THE PARTIES A NOTICE THAT HE DOES NOT DEEM IT ADVISABLE TO APPOINT A CONCILIATION BOARD,

AS THE CASE MAY BE.

4. ON THE EVIDENCE IT APPEARS THAT THE COMPLAINT IS BASED UPON THE DEMAND BY THE RESPONDENT FOR HIGHER PRODUCTION OF WOODEN PALLETS BY OPERATORS OF A PALLET MAKING MACHINE FOLLOWING THE ATTACHMENT OF AN AUTOMATIC STACKER DESIGNED TO PERFORM WORK PREVIOUSLY DONE BY HAND. THE EVIDENCE ESTABLISHES THAT THE INTRODUCTION OF THE STACKER WAS A THING PUT IN MOTION BEFORE THE PERIOD OF PROHIBITION SET OUT IN THE SECTION AND IS, THEREFORE, NOT CAUGHT BY THE SECTION. (SEE SCARBOROUGH CENTENARY HOSPITAL AND THE CASES CITED THEREIN - OLRB MONTHLY REPORTS JANUARY 1969, P. 1049). THE APPLICATION INSOFAR AS IT REFERS TO SECTION 59(1)(A) OF THE ACT IS THEREFORE DISMISSED.

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25-70-U: LAUNDRY, DRY CLEANING & DYE HOUSE WORKERS' INTERNATIONAL UNION, LOCAL 351 (APPLICANT) v. VAIL'S SERVICES CO. LIMITED AND MR. JOHN SCHERER (RESPONDENTS).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS P. J. O'KEEFFE AND J.E.C. ROBINSON, Q.C..

APPEARANCES AT THE HEARING: J. B. WATERMAN AND T. CORRIGAN FOR THE APPLICANT, J. F. LAING FOR THE RESPONDENTS.

DECISION OF THE BOARD:

MARCH 15, 1971.

1. THIS APPLICATION IS WITHDRAWN INsofar AS IT RELATES TO AN ALLEGED OFFENCE OF SECTION 51(1) OF THE LABOUR RELATIONS ACT AT THE REQUEST OF THE APPLICANT WITH THE CONSENT OF THE RESPONDENTS BY LEAVE OF THE BOARD.
2. THIS IS AN APPLICATION FOR CONSENT TO INSTITUTE A PROSECUTION AGAINST THE RESPONDENTS WHEREIN THE APPLICANT HAS ALLEGED THAT THE RESPONDENTS HAVE REFUSED TO BARGAIN IN GOOD FAITH AND MAKE EVERY REASONABLE EFFORT TO MAKE A COLLECTIVE AGREEMENT WITH THE APPLICANT, CONTRARY TO SECTION 12 OF THE LABOUR RELATIONS ACT.
3. THE FACTS WHICH LED TO THIS APPLICATION ARE AS FOLLOWS. THE APPLICANT WAS CERTIFIED AS BARGAINING AGENT FOR CERTAIN EMPLOYEES OF THE RESPONDENT COMPANY ON JULY 13, 1970. FOLLOWING NOTICE TO BARGAIN, MEETINGS WERE HELD BETWEEN THE APPLICANT AND THE RESPONDENTS AT THE RESPONDENTS' PREMISES ON JULY 31, 1970 AND AUGUST 20, 1970. AT THE MEETING ON JULY 31, THE APPLICANT SUBMITTED A PROPOSED COLLECTIVE AGREEMENT FOR CONSIDERATION BY THE RESPONDENTS. THE RESPONDENTS REQUESTED AND WERE GIVEN AN OPPORTUNITY TO STUDY AND CONSIDER THE PROPOSALS CONTAINED IN THE DOCUMENT SUBMITTED BY THE APPLICANT. WHEN THE PARTIES MET AGAIN ON AUGUST 20, 1970, THE RESPONDENTS SUBMITTED A PROPOSED COLLECTIVE AGREEMENT IN WRITING WHICH DID NOT CONTAIN ANY REFERENCE TO SOME OF THE PROVISIONS CONTAINED IN THE PROPOSALS ORIGINALLY SUBMITTED BY THE APPLICANT. IT WAS THE RESPONDENTS' POSITION THAT WHILE THE COMPANY WAS PREPARED TO ENTER INTO A COLLECTIVE AGREEMENT WITH THE APPLICANT IN THE TERMS SET OUT IN ITS PROPOSALS, THE WAGES AND CERTAIN OTHER CONDITIONS OF EMPLOYMENT WOULD REMAIN THE SAME. THE PROPOSALS MADE BY THE COMPANY CONTAINED A RECOGNITION CLAUSE, A MANAGEMENT'S RIGHTS CLAUSE, A GRIEVANCE PROCEDURE, A NO STRIKE OR LOCK-OUT CLAUSE, AN HOURS OF WORK CLAUSE, A VACATION WITH PAY CLAUSE, A PLANT HOLIDAY CLAUSE, A LENGTH OF SERVICE (SENIORITY) CLAUSE, AND CERTAIN GENERAL PROVISIONS. THE PROPOSALS MADE BY THE RESPONDENTS WERE UNACCEPTABLE TO THE APPLICANT.
4. ON AUGUST 21, 1970, THE APPLICANT APPLIED TO THE DEPARTMENT OF LABOUR FOR THE APPOINTMENT OF A CONCILIATION OFFICER.
5. ON SEPTEMBER 2, 1970, THE MINISTER OF LABOUR GAVE NOTICE THAT A CONCILIATION OFFICER HAD BEEN APPOINTED. ON OCTOBER 19, 1970, THE PARTIES MET IN THE PRESENCE OF THE SAID CONCILIATION OFFICER AT WHICH TIME THE APPLICANT PROPOSED A COLLECTIVE AGREEMENT IN SUBSTANTIALLY THE SAME FORM AS THAT PROPOSED AT THE MEETING ON JULY 31, 1970; HOWEVER, THE HEALTH AND WELFARE DEMANDS IN THE PROPOSALS MADE AT THE MEETING ON OCTOBER 19 HAD BEEN INCREASED. THE CONCILIATION OFFICER WAS UNABLE TO EFFECT A COLLECTIVE AGREEMENT BETWEEN THE PARTIES. ON NOVEMBER 9, 1970, THE APPLICANT COMMENCED A LEGAL STRIKE AGAINST THE RESPONDENT COMPANY WHICH WAS STILL CONTINUING ON MARCH 4, 1971, THE

DATE OF THE HEARING IN THIS MATTER.

6. ON FEBRUARY 15, 1971, THE APPLICANT AGAIN MET WITH THE RESPONDENTS IN THE OFFICES OF THE CONCILIATION OFFICER. AT THIS SUBSEQUENT MEETING, THE APPLICANT REDUCED ITS DEMANDS; HOWEVER, ONCE AGAIN THE CONCILIATION OFFICER WAS UNABLE TO EFFECT A COLLECTIVE AGREEMENT BETWEEN THE PARTIES. AT THE MEETINGS ON OCTOBER 19 AND FEBRUARY 15 WHICH HAD BEEN CONVENED BY THE CONCILIATION OFFICER, NOTHING OF NOTE WAS SAID BY THE RESPONDENTS IN THE PRESENCE OF THE APPLICANT'S OFFICIALS. APPARENTLY THE CONCILIATION OFFICER CONDUCTED NEGOTIATIONS IN THE USUAL MANNER AND HE MET SEPARATELY WITH THE PARTIES AFTER THE INITIAL PROPOSALS HAD BEEN MADE.

7. AFTER THE UNION HAD MADE ITS REVISED PROPOSALS ON FEBRUARY 15, THE COMPANY OFFICIALS MET WITH THE CONCILIATION OFFICER AND STUDIED THE UNION'S PROPOSALS FOR 2 1/2 HOURS BEFORE FINALLY ADVISING THE CONCILIATION OFFICER THAT THEY WERE NOT PREPARED TO ACCEPT THE PROPOSALS MADE BY THE UNION.

8. WHEN CONSIDERING THE EVIDENCE IN THIS CASE, WE MAY LOOK AT ALL THE EVENTS THAT TOOK PLACE DURING THE COURSE OF BARGAINING BETWEEN THE PARTIES IN ORDER TO OBTAIN THE COMPLETE PICTURE OF THE RELATIONSHIP BETWEEN THE PARTIES DURING BARGAINING. HOWEVER, IN VIEW OF THE SIX-MONTH LIMITATION ON SUMMARY PROCEEDINGS, THE APPLICANT MUST CALL EVIDENCE OF EVENTS WITHIN SIX MONTHS OF THE DATE OF THE HEARING IN THIS MATTER IN SUPPORT OF ITS ALLEGATIONS OF A FAILURE TO BARGAIN IN GOOD FAITH.

9. IT IS NOTED THAT THE RESPONDENTS HAD NEVER REFUSED TO MEET AND BARGAIN DURING THE SIX-MONTH PERIOD PRIOR TO THIS APPLICATION BEING MADE. THE ONLY BARGAINING MEETINGS BETWEEN THE PARTIES IN THE SIX MONTHS PRECEDING THE HEARING IN THIS MATTER IN WHICH THE APPLICANT ATTEMPTED TO BARGAIN WERE THE CONCILIATION MEETINGS HELD ON OCTOBER 19, 1970 AND FEBRUARY 15, 1971.

10. AT THE TWO MEETINGS, THE ONLY BARGAINING THAT TOOK PLACE WAS THROUGH THE CONCILIATION OFFICER AND THERE WAS LITTLE OR NO DIRECT CONTACT BETWEEN THE PARTIES. THE EVIDENCE AS TO WHAT WAS SAID BY THE RESPONDENTS DURING THESE MEETINGS WAS OF AN INNOCUOUS NATURE. HOWEVER, THE APPLICANT ATTACHED GREAT WEIGHT TO THE FACT THAT THE RESPONDENTS FAILED TO OFFER A WAGE INCREASE TO THE EMPLOYEES IN THE BARGAINING UNIT AT ANY TIME AND ALSO FAILED TO MAKE A COUNTER-OFFER AT THE MEETING OF FEBRUARY 15, 1971 WHEN THE APPLICANT REDUCED ITS DEMANDS.

11. IN VIEW OF THE EVIDENCE THAT THE RESPONDENTS TOOK 2 1/2 HOURS TO CONSIDER THE NEW OFFER MADE ON FEBRUARY 15, WE MUST FIND THAT THE RESPONDENTS GAVE FULL CONSIDERATION TO THE UNION'S PROPOSALS AND DID NOT DISMISS THE PROPOSALS OUT OF HAND. AGAIN, NOTHING TURNS ON

THE FACT THAT THE RESPONDENTS DID NOT OFFER TO INCREASE WAGES. THE MERE FACT THAT A UNION IS CERTIFIED TO REPRESENT EMPLOYEES DOES NOT, OF ITSELF, ENTITLE EMPLOYEES TO AN INCREASE IN WAGES.

12. IN THIS CASE, THE RESPONDENTS OBVIOUSLY ENGAGED IN HARD BARGAINING. A STRIKE ENSUED WHEN NO INCREASE IN WAGES WAS OFFERED. THE FACT THAT NO INCREASE WAS OFFERED AFTER THE STRIKE HAD LASTED FOR THREE MONTHS DOES NOT, OF ITSELF, INDICATE A FAILURE TO BARGAIN IN GOOD FAITH. THERE WAS NO EVIDENCE THAT THE RESPONDENT COMPANY REFUSED TO ENTER A COLLECTIVE AGREEMENT WITH THE APPLICANT. WHILE THE COLLECTIVE AGREEMENT PROPOSED BY THE RESPONDENT COMPANY COULD NOT BE DESCRIBED AS GENEROUS, THAT FACT ALONE IS NOT INDICATIVE OF BAD FAITH. IT WOULD APPEAR FROM THE EVIDENCE THAT THE COMPANY WAS PREPARED AT ALL TIMES TO ENTER A COLLECTIVE AGREEMENT WITH THE APPLICANT WHICH WOULD HAVE SATISFIED THE MINIMAL REQUIREMENTS OF THE LABOUR RELATIONS ACT. THE BOARD IS ACCORDINGLY UNABLE TO FIND ON THE EVIDENCE BEFORE IT THAT THE RESPONDENTS HAVE FAILED TO BARGAIN IN GOOD FAITH AND MAKE EVERY REASONABLE EFFORT TO MAKE A COLLECTIVE AGREEMENT AS REQUIRED BY SECTION 12 OF THE ACT.

13. THE APPLICATION IS THEREFORE DISMISSED.

14. BEFORE LEAVING THIS CASE, HOWEVER, THE BOARD FEELS OBLIGED TO COMMENT ON CERTAIN EVIDENCE IN THIS MATTER. IN RESPONSE TO QUESTIONING BY COUNSEL FOR THE APPLICANT, MR. SCHERER TESTIFIED THAT HE FELT INTIMIDATED WHEN HE WAS ASKED DURING A TELEPHONE CONVERSATION WITH AN OFFICIAL OF THE APPLICANT WHETHER HE THOUGHT "WE SHOULD GET TOGETHER FOR A MEETING BEFORE ANYTHING FURTHER DEVELOPS". MR. SCHERER STATED THAT HE FELT INTIMIDATED BECAUSE "STRANGE THINGS" HAD HAPPENED AFTER THE STRIKE HAD COMMENCED. ON FURTHER EXAMINATION, THE STRANGE THINGS REFERRED TO BY MR. SCHERER WERE THE FACT THAT 51 TIRES ON CARS OWNED BY MEMBERS OF MANAGEMENT AND EMPLOYEES HAD BEEN FLATTENED; THE ROOF OF A CONVERTIBLE HAD BEEN SLASHED; FOUR LARGE HOLES HAD BEEN BROKEN IN STORE WINDOWS OF THE RESPONDENT'S PREMISES; ACID HAD BEEN THROWN ON BUNDLES OF LAUNDRY IN THE RESPONDENT'S TRUCKS; ACID HAD BEEN THROWN THROUGH THE BACK WINDOW OF THE RESPONDENT'S PLANT; THE DASHBOARDS OF THREE OF THE RESPONDENT'S TRUCKS HAD BEEN SMASHED AND IGNITION WIRES AND BATTERY CABLES HAD BEEN CUT.

15. THESE "STRANGE" HAPPENINGS ARE, IN OUR VIEW, MORE THAN MERE COINCIDENCES. ALL OF THESE HAPPENINGS OCCURRED AFTER THE ONSET OF THE STRIKE IN THIS MATTER AND WERE, IN ALL LIKELIHOOD, RELATED TO THE STRIKE. THE BOARD WISHES TO STATE THAT IT VIEWS WITH THE UTMOST DISTASTE ANY UNION OR UNION MEMBER THAT WOULD COUNTENANCE OR ENGAGE IN SUCH UNLAWFUL, DANGEROUS AND DESTRUCTIVE ACTIVITIES.

18672-70-U: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO-CLC (COMPLAINANT) V. ALUMINUM COMPANY OF CANADA, LTD. (ALCAN CANADA PRODUCTS) (RESPONDENT).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND J. E. C. ROBINSON, Q.C..

APPEARANCES AT THE HEARING: H. LORNE MORPHY AND HARRY J. KRETSCHMANN FOR THE COMPLAINANT; DONALD HERSEY, THOMAS HEINTZMAN AND EDWARD MATTHEWS FOR THE RESPONDENT.

DECISION OF VICE-CHAIRMAN FRANK V. BOSCARIOL AND BOARD MEMBER J. E. C. ROBINSON, Q.C. MARCH 15, 1971.

1. THIS IS A COMPLAINANT FOR RELIEF UNDER SECTION 65 OF THE LABOUR RELATIONS ACT, WHEREIN THE COMPLAINANT ALLEGES THAT ADAM KEREKES WAS DISMISSED BY THE RESPONDENT ON NOVEMBER 10, 1970, CONTRARY TO THE PROVISIONS OF THE ACT.
2. THE EVIDENCE DISCLOSED THAT KEREKES WAS HIRED BY THE RESPONDENT AS A MAINTENANCE MECHANIC ON JUNE 15, 1970, AT ITS RECENTLY OPENED PLANT IN BRACEBRIDGE. AT THIS TIME KEREKES FORMED PART OF A THREE-MAN MAINTENANCE CREW WHICH WAS GIVEN LITTLE DIRECT SUPERVISION IN THE PLANT EXCEPT FOR DAILY INSTRUCTIONS ISSUED THROUGH JOHN SAUNDERS ON BEHALF OF ED MATTHEWS, THE MAINTENANCE SUPERINTENDENT. THIS RELATIVE INDEPENDENCE ENDED ABOUT MID-JULY WITH THE HIRING OF RON ROYSTON AS THE MAINTENANCE FOREMAN OF THIS CREW.
3. ALTHOUGH KEREKES DESCRIBED HIS INITIAL RELATIONSHIP WITH ROYSTON AS "MOSTLY FRIENDLY", ROYSTON TESTIFIED THAT "HE (KEREKES) SEEMED TO HAVE RESENTED THE FACT THAT I WAS THERE." HE FURTHER STATED THAT WHENEVER GIVING WORK INSTRUCTIONS TO KEREKES, "HE ALWAYS WANTED TO KNOW THE REASON WHY." IN THIS REGARD, EVIDENCE WAS HEARD OF THE RESPONDENT'S INVOLVEMENT IN A JURISDICTIONAL DISPUTE IN MID-AUGUST WHICH COULD PROBABLY HAVE BEEN AVOIDED HAD ROYSTON FOLLOWED KEREKES' UNSOLICITED ADVICE. EVIDENCE WAS ALSO HEARD IN CONNECTION WITH KEREKES' ACTIVE PARTICIPATION, ALONG WITH OTHER EMPLOYEES, IN QUESTIONING THE RESPONDENT'S RIGHT TO UNILATERALLY REMOVE THE 10-MINUTE COFFEE BREAK UPON THE INTRODUCTION OF VENDING MACHINES ON THE PREMISES.
4. DESPITE THESE FRICTIONS, ROYSTON PREPARED A FAVOURABLE "PERFORMANCE REVIEW", DATED SEPTEMBER 15, 1970 CONCERNING KEREKES, AND FILED HEREIN AS EXHIBIT #5. TOWARDS THE END OF THIS REPORT, HOWEVER, APPEARS THE FOLLOWING: "I WILL IN THE FUTURE BE PLACED IN A POSITION WHERE I WILL HAVE TO DISCIPLINE THIS MAN, DUE TO HIS INTERFERENCE WITH THE REST OF THE GROUP."
5. IN THIS CONNECTION, THE BOARD FINDS UPON A REVIEW OF ALL

THE RELEVANT EVIDENCE THAT EFFECTIVE SEPTEMBER 15, 1970, KEREKES' STATUS AS A PROBATIONARY EMPLOYEE, CEASED.

6. IN RESPONSE TO KEREKES' QUERY AS TO WHY ROYSTON THOUGHT THAT HE WAS A TROUBLEMAKER, A MEETING WAS HELD BETWEEN THEM ON OCTOBER 7, 1970 WHEREIN KEREKES WAS AGAIN INFORMED OF HIS INTERFERENCE WITH THE EMPLOYEES. (SEE EXHIBIT #6)

7. SOME TWO WEEKS LATER, ANOTHER INCIDENT DEVELOPED BETWEEN THEM, WHEN ROYSTON HAD SELECTED TWO EMPLOYEES TO ATTEND A FIRST AID COURSE. ROYSTON TOOK OFFENCE TO THE ACTIONS OF MRS. KEREKES, (WHO WAS EMPLOYED IN THE OFFICE BY THE RESPONDENT), IN ASKING HER HUSBAND IN THE PRESENCE OF ALL TO HEAR, WHY ROYSTON HAD NOT CHOSEN HIM.

8. ACCORDING TO THE EVIDENCE OF ROYSTON, MATTERS FINALLY CAME TO A HEAD ON FRIDAY, NOVEMBER 6, 1970, WHEN HE OBSERVED KEREKES INTERFERING WITH THE WORK OF A NEW EMPLOYEE, NAMELY, GUSTAFSON. THE SITUATION WAS FURTHER AGGRAVATED THAT AFTERNOON WHEN ROYSTON HAD IMPROPERLY ACCUSED KEREKES AND ANOTHER EMPLOYEE NAMED BOYCE, OF SITTING DOWN FOR COFFEE FOR ABOUT AN HOUR. WHEN ROYSTON APOLOGIZED UPON DISCOVERING THAT THEY WERE, IN FACT, ENGAGED IN DISCUSSING A JOB, KEREKES IS ALLEGED TO HAVE ACCUSED HIM OF SPYING ON BEHALF OF THE COMPANY. ROYSTON THEN ATTEMPTED TO SEE HIS SUPERVISOR, MATTHEWS, CONCERNING THIS INCIDENT TO RECOMMEND DISMISSAL BUT UNFORTUNATELY MATTHEWS HAD ALREADY LEFT THE PLANT. KNOWING THAT MATTHEWS WOULD QUESTION HIM ON THE GROUNDS FOR SUCH ACTION, ROYSTON PREPARED WRITTEN REASONS AT HOME DURING THAT EVENING AND THE FOLLOWING SATURDAY MORNING, WHICH WERE FILED AS EXHIBIT #8 AT THE HEARING.

9. ON THE FOLLOWING MONDAY, NOVEMBER 9, 1970, ROYSTON MET WITH MATTHEWS AND SUBMITTED EXHIBIT 8 TO HIM REQUESTING THAT KEREKES BE DISMISSED. MATTHEWS TESTIFIED THAT HE OVERRULED HIM ON THIS POINT AND SUGGESTED INSTEAD THAT KEREKES BE ISOLATED FROM THE OTHER EMPLOYEES. LATER THAT MORNING MATTHEWS STATED THAT HE CHANGED HIS MIND ABOUT THE PRACTICALITY OF SEGREGATING KEREKES. DUE TO PLANT PROBLEMS, MATTHEWS WAS UNABLE TO SEE ROYSTON UNTIL 2:30 THAT AFTERNOON, WHEREUPON ROYSTON SUGGESTED THAT IN ORDER TO PREVENT A SCENE IN THE PLANT, IT WOULD BE BETTER TO DISCHARGE KEREKES AT THE END OF THE SHIFT AT 4:30 P.M. NO SOONER HAD THIS DECISION BEEN MADE, THEN MATTHEWS WAS INFORMED THAT MRS. KEREKES HAD BEEN TAKEN ILL IN THE OFFICE. KEREKES WAS THEREUPON INFORMED AND IMMEDIATELY LEFT THE PLANT WITH HIS WIFE. MATTHEWS THEN SUGGESTED THAT ROYSTON TELEPHONE KEREKES AT HOME THAT EVENING AND HAVE HIM RETURN TO THE PLANT WHEREUPON HE WOULD BE DISCHARGED. UNFORTUNATELY KEREKES COULD NOT LEAVE HIS WIFE ALONE AT THIS TIME, SO IT WAS ARRANGED THAT ROYSTON WOULD DISCHARGE HIM THE FOLLOWING MORNING AT THE START OF THE SHIFT, WHEN MATTHEWS ARRIVED AT WORK THE NEXT MORNING AT APPROXIMATELY 8:30 A.M., HE FOUND THAT ROYSTON HAD TERMINATED KEREKES. THERE THEN FOLLOWED AN EXIT INTER-

VIEW CONCERNING THE REASONS FOR DISMISSAL.

10. DESPITE THE PENETRATING CROSS-EXAMINATION OF ROYSTON, WHICH LASTED WELL OVER 2 HOURS, IN WHICH COUNSEL FOR THE COMPLAINANT DID ELICIT CERTAIN INCONSISTENCIES IN EXHIBIT #8, ROYSTON REMAINED UNSHAKEN IN HIS POSITION THAT THE DOCUMENTS WERE PREPARED ON THE FRIDAY EVENING AND SATURDAY MORNING FOLLOWING THE INCIDENTS OF NOVEMBER 6, AS DESCRIBED IN PARAGRAPH 8.

11. THE EVIDENCE OF ROBERT VIOLETTE, ADMINISTRATION MANAGER FOR THE RESPONDENT, DISCLOSED THAT HE RECEIVED TWO GREEN NOTICES OF THE I.B.E.W.'S APPLICATION FOR CERTIFICATION, IN THE MAIL, AT ABOUT 11:00 A.M. ON MONDAY, NOVEMBER 9, 1970. UPON DISCUSSING THE MATTER WITH HIS SUPERIOR WHEREIN LEGAL ADVICE WAS SOUGHT, VIOLETTE POSTED THE NOTICES SOME TIME AFTER DINNER ON THE AFOREMENTIONED DATE. IN THIS REGARD, MATTHEWS TESTIFIED THAT HE WAS INFORMED OF THE APPLICATION AT ABOUT MONDAY NOON BUT DID NOT ASSOCIATE IT WITH KEREKES. WHEN HE HAD SUBSEQUENTLY DISCOVERED THAT KEREKES WAS THE UNION PRESIDENT, MATTHEWS STATED HE WAS COMPLETELY SURPRISED IN VIEW OF THE FACT THAT KEREKES WAS SUCH AN INDEPENDENT MINDED MAN AND HAD IN THE PAST INDICATED THAT HE WAS NOT INTERESTED IN UNIONS. ROYSTON'S EVIDENCE IS TO THE EFFECT THAT IT WAS ONLY AFTER THE EXIT INTERVIEW THAT HE DISCOVERED THAT AN APPLICATION HAD BEEN FILED WITH THE BOARD. HE FURTHER STATED THAT HE HAD NO REASON TO BELIEVE THAT KEREKES WAS PARTICIPATING IN UNION ACTIVITIES IN VIEW OF THE FACT THAT KEREKES WOULD OFTEN MAKE A POINT OF REMINDING HIM THAT HE (KEREKES) WAS A BUSINESSMAN HIMSELF IN THE OPERATION OF HIS OWN BUSINESS KNOWN AS "ROBOT MACHINE SHOP."

12. AS HAS BEEN STATED IN THE WESTON BAKERIES LIMITED CASE, (FILE #18468-70-U), "IN COMPLAINTS BROUGHT UNDER SECTION 65, THE PRIMARY QUESTION BEFORE THE BOARD IS NOT WHETHER THERE WAS JUST CAUSE FOR DISCHARGE BUT WHETHER THE PERSON COMPLAINING WAS DEALT WITH CONTRARY TO THE PROVISIONS OF THE ACT." IN THIS REGARD, THE BOARD NOTES THE FACT THAT KEREKES RECEIVED NO ACTUAL DISCIPLINE CONCERNING HIS CONDUCT PRIOR TO HIS TERMINATION, ALTHOUGH THE MATTER WAS BROUGHT TO HIS ATTENTION ON A NUMBER OF OCCASIONS.

13. IN THE CYRVILLE CHRYSLER DODGE LIMITED CASE, O.L.R.B., M.R. MARCH 1970, P.1466 AT P.1467, THE FOLLOWING PRINCIPLE IS CITED: "IT IS OBVIOUS THAT IN ORDER TO SUCCEED IN DISCHARGING THE ONUS WHICH RESTS ON IT, THE COMPLAINANT MUST ESTABLISH, AS ONE OF THE ESSENTIAL INGREDIENTS OF ITS CASE, THAT THE RESPONDENT HAD KNOWLEDGE OF THE UNION ACTIVITIES OF THE DISCHARGED EMPLOYEE. IT IS WELL RECOGNIZED THAT PROOF OF SUCH KNOWLEDGE PRESENTS DIFFICULTIES TO ANY COMPLAINANT BECAUSE OF THE FACT THAT THE TRUE REASONS FOR A DISCHARGE ARE VERY OFTEN SOLELY WITHIN THE KNOWLEDGE OF THE EMPLOYER. THE COMPLAINANT HAS SELDOM AVAILABLE TO IT DIRECT EVIDENCE AND IS FORCED TO RELY UPON

INFERENTIAL KNOWLEDGE." IN THE PRESENT INSTANCE, WE CAN FIND NO DIRECT EVIDENCE NOR IS THERE ANY EVIDENCE OF A SUBSTANTIAL NATURE TO INFER THAT THE RESPONDENT KNEW OF KEREKES' ACTIVITY ON BEHALF OF THE UNION.

14. NEVERTHELESS, THE BOARD HAS HELD THAT WHERE A DISCHARGE TAKES PLACE AT ABOUT THE TIME THAT AN APPLICATION FOR CERTIFICATION IS MADE, CERTAIN SUSPICIONS AS TO THE EMPLOYER'S MOTIVES MAY BE RAISED. (SEE PYRAMID HOMES CASE, FILE NO. 17685-70-U) HAVING CAREFULLY REVIEWED ALL OF THE EVIDENCE CALLED BY THE RESPONDENT IN THIS REGARD, WE ARE OF THE OPINION THAT THE EXPLANATION GIVEN FOR KEREKES' DISMISSAL IN THESE CIRCUMSTANCES, IS CREDIBLE.

15. ON THE BASIS OF ALL THE EVIDENCE WHICH WAS CONSIDERABLE, AND IN THE LIGHT OF THE ABOVE PRINCIPLES, TOGETHER WITH THOSE ENUNCIATED IN THE NATIONAL AUTOMATIC VENDING CO. LTD. CASE, CLLC, VOL. 2, 1960-1964. ARTICLE 16278 AT P. 1161, THE BOARD FINDS THAT THE COMPLAINANT HAS NOT SATISFIED THE ONUS THAT RESTS UPON IT TO ESTABLISH THAT ADAM KEREKES WAS DEALT WITH CONTRARY TO THE ACT.

16. THE COMPLAINANT IS ACCORDINGLY DISMISSED.

DECISION OF BOARD MEMBER O. HODGES: MARCH 15, 1971.

1. I DISSENT.

2. THE KEY TO THE TRUE REASON FOR THE DISMISSAL OF KEREKES IS TO BE FOUND IN THE EVENTS TRANSPIRING ON MONDAY, 9TH NOVEMBER, 1970, WHICH ARE RECITED IN PART IN PARAGRAPH 9 OF THE MAJORITY DECISION.

3. THE EVIDENCE IN CHIEF OF THE RESPONDENT WITNESS, ADMINISTRATIVE MANAGER ROBERT VIOLETTE, IS THAT THE GREEN BOARD NOTICES OF THE APPLICATION FOR CERTIFICATION WERE RECEIVED IN THE MAIL ON MONDAY, 9TH NOVEMBER, 1970, AT 11 A.M. "EXACTLY". THE NEXT WORDS OF HIS TESTIMONY ARE OF PARTICULAR INTEREST BECAUSE OF THE SENSE OF URGENCY AND CONCERN EVIDENT IN THE MIND OF THIS KEY MANAGEMENT OFFICIAL WITH RESPECT TO UNION ACTIVITY - HE TESTIFIED, "I RUSHED OUT AND SHOWED IT TO HIM" - A PHRASE HE REPEATED A MOMENT LATER WITH REFERENCE TO THIS INCIDENT WITH THE GENERAL MANAGER, MR. R. ZOBRIST, TO WHOM HE RUSHED WITH THIS EXCITING MAIL. OBVIOUSLY, THE MANAGEMENT HAD POSITIVE EVIDENCE OF THE PRESENCE OF THE UNION NO LATER THAN A FEW MINUTES AFTER 11 A.M.

4. THE TESTIMONY OF RESPONDENT WITNESS, EDWARD MATTHEWS, SUPERINTENDENT OF ENGINEERING SERVICES AND PROJECT ENGINEER FOR THE GROUP BUILDING THE PLANT, WAS THAT THE PERSONNEL POLICY OF ALCAN GIVES SUPERINTENDENTS THE LAST WORD IN HIRING AND FIRING. THAT IS EVIDENT IN THIS MATTER, SINCE ROYSTON, THE FOREMAN OVER KEREKES, EXPRESSED A VIEW ONLY TWO WEEKS AFTER STARTING AS FOREMAN, ACCORDING TO THE TESTIMONY

OF RESPONDENT WITNESS ROBERT VIOLETTE, THAT "I'M GOING TO HAVE TO FIRE THAT MAN (KEREKES)." MATTHEWS TESTIFIED THAT ABOUT THE 1ST OF AUGUST ROYSTON TOLD HIM "KEREKES WON'T LISTEN." ROYSTON HAD BEEN HIRED THE MIDDLE OF JULY, AND HAD BY THE 1ST OF AUGUST DECIDED "THE GROUP WOULD BE DIFFICULT TO PULL TOGETHER", BECAUSE OF KEREKES, THE WITNESS SAID.

5. IN SPITE OF ROYSTON (WHO MATTHEWS SAID WAS HIS BEST CHOICE OF MANY PROSPECTS FOR FOREMAN HE INTERVIEWED AT HOME) MATTHEWS LET THE 90-DAY PROBATION PERIOD GO BY AFTER RECEIVING A PERFORMANCE REVIEW FROM ROYSTON ON KEREKES IN TIME TO ACT ON THE 15TH OF SEPTEMBER, BEFORE THE 90-DAY PERIOD EXPIRED.

6. MATTHEWS WAS EMPLOYED AT SHAWINIGAN FOR ALCAN "IN A UNION SITUATION", HE SAID, WHERE HE LEARNED EVERYTHING HAD TO BE WRITTEN DOWN, DATED AND SIGNED, AND HE IMPRESSED THIS ON ROYSTON; "HAVE TO KEEP RECORDS", HE SAID.

7. AFTER MATTHEWS' VACATION, ON THE MONDAY OR TUESDAY FOLLOWING THE 7TH OF OCTOBER, HE TESTIFIED THAT ROYSTON WAS AGAIN COMPLAINING ABOUT KEREKES BEING A "BUSYBODY", ALTHOUGH THERE WAS AGREEMENT IN FAVOUR OF KEREKES' TECHNICAL QUALIFICATIONS.

8. MATTHEWS TESTIFIED THAT MR. ZOBRIK, IN THE WEEK OF THE 27TH OF OCTOBER, CALLED A MEETING WITH HIMSELF, BOB OUELLETTE AND ROYSTON. ZOBRIK SAID THEN, "GET RID OF KEREKES, HE IS THE STUMBLING BLOCK."

9. ON FRIDAY, THE 6TH OF NOVEMBER, ACCORDING TO MATTHEWS' TESTIMONY, ROYSTON CAME TO SEE HIM AT 4 P.M., BUT MATTHEWS FORGOT HE TOLD ROYSTON TO WAIT IN HIS OFFICE, AND DIDN'T MEET HIM. HOWEVER, AT 8:30 A.M. MONDAY, THE 9TH OF NOVEMBER, ROYSTON WAS IN MATTHEWS' OFFICE SAYING, "ADAM - HE HAS GOT TO GO." ROYSTON SUBMITTED A SHEAF OF PAPERS REPRESENTING A WEEK-END CRITIQUE OF KEREKES TO JUSTIFY THE DISCHARGE, BUT THE WITNESS, MATTHEWS, AFTER READING THE MATERIAL, TESTIFIED HE STILL REFUSED TO FIRE KEREKES, "I SUGGEST WE TRY TO ISOLATE KEREKES BY HIMSELF", HE TOLD ROYSTON, AND ROYSTON SAID, "I'LL TRY IT."

10. THE CRITICAL CHANGE IN THE LONG-STANDING REFUSAL BY MATTHEWS TO ACT AGAINST KEREKES AT THE BEHEST OF ROYSTON TOOK PLACE BETWEEN THE TIME OF THIS LAST INSTRUCTION TO ROYSTON WHEN ROYSTON AGREED TO TRY MATTHEWS' WAY, AND THAT AFTERNOON AT 2 OR 2:30 P.M. MATTHEWS TESTIFIED THAT "I WENT TO GET ROYSTON, AND TOLD HIM THAT I HAD REVERSED MY POSITION - WE WILL FIRE KEREKES". ROYSTON REPLIED, THE WITNESS SAID, "I'LL DO IT AT 4:30 P.M."

11. THIS DRAMATIC ABOUT FACE BY MATTHEWS WAS OBVIOUSLY OCCASIONED BY THE KNOWLEDGE OF THE APPLICATION FOR CERTIFICATION WHICH COULD ONLY HAVE COME TO MATTHEWS' ATTENTION AFTER SPEAKING TO ROYSTON EARLIER THAT

MORNING. TO THINK THAT THE MAIL THAT WAS RUSHED TO ZOBRIST BY VIOLETTE AT 11 A.M. WOULD NOT HAVE BEEN RELAYED TO MATTHEWS BEFORE 2 P.M. BY ZOBRIST HIMSELF WITH INSTRUCTIONS TO CARRY OUT ZOBRIST'S EARLIER DIRECTION TO GET RID OF KEREKES, IS IMPOSSIBLE. IT WAS THAT KNOWLEDGE AND THAT DIRECTION THAT DECIDED MATTHEWS TO FINALLY CHANGE HIS MIND AND INSTRUCT ROYSTON TO FIRE KEREKES.

12. THE MAJORITY, AT PARAGRAPH 13 OF THEIR DECISION, REFER TO THE PRINCIPLE FOLLOWED BY THE BOARD IN DECIDING WHETHER THE EMPLOYER IS LIKELY TO HAVE HAD KNOWLEDGE OF THE UNION ACTIVITY OF THE DISCHARGED EMPLOYEE. IN THIS REGARD, THE EVIDENCE IN CROSS-EXAMINATION OF THE RESPONDENT WITNESS, OWEN JOSEPH WALBRIDGE, REVEALED THAT HE KNEW KEREKES WAS ACTING AS INTERIM PRESIDENT OF THE UNION AND HAD BEEN IN THAT POSITION FOR SOME TIME. HE TESTIFIED THAT KEREKES WAS SPOKESMAN FOR THE MEN. HE SAID THAT THE ORGANIZING CAMPAIGN WAS GOING ON FOR SOME TIME, THAT THEY WERE ALL INVOLVED AND THAT KEREKES WAS THE LEADER. KEREKES SPOKE FOR THE MEN, HE SAID, CONCERNING THE COFFEE BREAK DISPUTE, ABOUT WHICH THEY WERE ALL DISTURBED.

ROYSTON, THIS WITNESS TESTIFIED, "GENERALLY ATE LUNCH WITH US, WE SAID WHAT WE WANTED TO SAY - NOBODY HIDING ANYTHING." THE EVIDENCE IN CHIEF OF THIS WITNESS WAS THAT, "I WAS TOLD NOT TO GET INVOLVED WITH ADAM (KEREKES) A FEW DAYS BEFORE HE WAS FIRED. ROYSTON TOLD ME TO STAY AWAY FROM ADAM."

13. IT IS UNREALISTIC TO BELIEVE THAT ROYSTON WOULD NOT AT LEAST SUSPECT KEREKES OF UNION ACTIVITY. IT IS MORE LIKELY IN THESE CLOSE CIRCUMSTANCES THAT ROYSTON EVEN KNEW THAT KEREKES WAS INTERIM UNION PRESIDENT AND LEADER OF THE ORGANIZING EFFORTS OF THE UNION. HOWEVER, ROYSTON HAD NO AUTHORITY TO HIRE OR FIRE, THIS BEING RESERVED TO MATTHEWS BY COMPANY POLICY.

14. AT THE SECOND HEARING, ON THE 4TH OF FEBRUARY, 1971, ROYSTON TESTIFIED IN CROSS-EXAMINATION THAT HE HAD BEEN A MEMBER OF THE INTERNATIONAL ASSOCIATION OF MACHINISTS ELSEWHERE. HE DIDN'T KNOW THAT ORGANIZATION HAD STARTED AT ALCAN, BUT HE HAD A FAIR IDEA THERE WOULD BE A UNION. HE SAID THAT ON THE 15TH OF SEPTEMBER KEREKES WANTED HIM TO CLEAR CERTAIN CONSTRUCTION PROBLEMS WITH THE CONSTRUCTION UNIONS TO AVOID TROUBLE. WHEN TESTIFYING ABOUT HIS WRITTEN REPORT PREPARED ON THE FRIDAY EVENING AND SATURDAY MORNING OF NOVEMBER 6 AND 7, AND GIVEN TO MATTHEWS ON THE MONDAY MORNING, 9 NOVEMBER, ROYSTON SAID THAT THESE NOTES WERE FOR MATTHEWS TO MAKE A JUDGMENT, AND THAT THEY WERE FOR THE BENEFIT OF MANAGEMENT AND NOT ONLY MATTHEWS. THE WITNESS TESTIFIED THAT MATTHEWS READ ALL OF THE REPORT MONDAY MORNING AND ASKED SOME QUESTIONS, AFTER WHICH MATTHEWS SAID, "ISOLATE KEREKES." WHEN THE WITNESS WAS ASKED IF THE DISCHARGE OF KEREKES IN THE AFTERNOON WAS A COINCIDENCE, HE REPLIED, "I DON'T KNOW IF IT WAS A COINCIDENCE - I WOULD SAY NOTHING." THE WITNESS GAVE AS A REASON FOR HIS PRESENTATION

TO MATTHEWS THAT, "I WANTED ADAM KEREKES) TO COME WITH US - RATHER THAN GO AGAINST US."

15. CLIFFORD GUSTAFSON, CALLED TO TESTIFY BY THE RESPONDENT, SAID HE WAS HIRED 2 NOVEMBER, 1970, AS A MECHANIC AND THAT ROYSTON WAS HIS FOREMAN. "WHEN I FIRST CAME, "HE SAID, "KEREKES ASKED WHAT I FELT ABOUT UNIONS. HE TOLD ME THEY WERE TRYING TO GET A UNION INTO ALCAN. HE ASKED ME TO SIGN A CARD. I THOUGHT ABOUT IT OVER-NIGHT AND TOLD HIM I WOULDN'T SIGN NOW." THE WITNESS TOLD KEREKES THAT HE, "HAD WORKED WITH ROYSTON FIFTEEN YEARS AGO - A FRIEND OF MINE." THESE EVENTS TRANSPIRED ON TUESDAY OR WEDNESDAY.

THE WITNESS TESTIFIED THAT MANAGEMENT OR ROYSTON DID NOT SPEAK TO HIM ABOUT THE UNION. HE SAID, "ROYSTON SPOKE TO ME - I SAID I HAD A PROBLEM BUT I WOULD SETTLE IT - SO I SPOKE TO ADAM AND SAID I WOULD SIGN HIS CARD."

MY VIEW OF THIS EVIDENCE IS THAT GUSTAFSON PROBABLY REPORTED TO ROYSTON CONCERNING THE UNION ACTIVITY OF KEREKES AT THE TIME HE "THOUGHT ABOUT IT OVERNIGHT" FOLLOWING THE SOLICITATION FOR MEMBERSHIP BY KEREKES BUT BEFORE HE ACTUALLY SIGNED THE UNION CARD.

16. IN CROSS-EXAMINATION, ROYSTON TESTIFIED THAT HE WAS HIRED AS MAINTENANCE FOREMAN ON 14 JULY, 1970, HAVING BEEN PREVIOUSLY EMPLOYED AS A MACHINIST IN 1948 AND IN CONSTRUCTION AS A MILLWRIGHT MORE RECENTLY. HE HAD 5 OR 6 MECHANICAL JOBS, INCLUDING SUPERVISORY RESPONSIBILITY AS HIGH AS MAINTENANCE SUPERINTENDENT BEFORE COMING TO ALCAN.

ROYSTON TESTIFIED KEREKES WAS CAPABLE, VERY ADAPTABLE, GENEROUS, PUNCTUAL, TOOK NO TIME OFF AND HAD THE ABILITY TO WORK WITHOUT SUPERVISION. ROYSTON SAID HE, "WROTE 15 SEPTEMBER TO THAT EFFECT - VERY SAME WORDS IN PERFORMANCE REVIEW" (EXHIBIT #5) WHICH MATTHEWS HAD REQUESTED. IN EXPLAINING THIS REPORT, ROYSTON SAID HE CONSIDERED DISCIPLINE OF KEREKES BUT DID NOT INCLUDE THAT SUGGESTION IN HIS FINAL REPORT (EXHIBIT 5) TO MATTHEWS. THIS CONSIDERATION OF DISCIPLINE APPEARS TO HAVE BEEN BASED ON THE INSISTANCE OF KEREKES TO KNOW WHY JOBS WERE BEING DONE THE WAY HE WAS INSTRUCTED TO DO THEM.

ROYSTON TESTIFIED THAT GUSTAFSON WAS HIRED 3 NOVEMBER AND THAT HE KNEW HIM BEFORE. HE TESTIFIED THAT KEREKES WAS BETTER, WHEN ASKED HOW THE MEN COMPARED, ROYSTON SAID HE TALKED TO GUSTAFSON "EVERY DAY - EVERYWHERE." EARLIER IN THE WEEK, GUSTAFSON TOLD HIM, "A GUY IN HERE IS BOTHERING ME" AND POINTED OUT ADAM KEREKES. ROYSTON THEN SAID, "ON FRIDAY I FOUND OUT" WHEN HE TALKED TO GUSTAFSON ABOUT ADAM AT 3 P.M. WHEN QUESTIONED ON THE CONTENTS OF THIS CONVERSATION AND WHETHER GUSTAFSON TOLD HIM ADAM KEREKES HAD ASKED HIM TO JOIN THE UNION - ROYSTON SAID HE "DID NOT ASK HIM (GUSTAFSON)" BUT THEN QUALIFIED THE ANSWER BY

SAYING IT WAS "GOING A LONG WAY BACK." HE THEN TESTIFIED THERE WAS NO DISCUSSION ABOUT THE UNION AND THAT HE DID NOT ASK GUSTAFSON ABOUT ADAM. THE WITNESS ALSO SAID, "ON FRIDAY HE SPOKE OPENLY, I TALKED TO HIM ALL WEEK - HE VOLUNTEERED." THIS EVIDENCE, AND THE UNCERTAINTY OF THE WITNESS WHEN FIRST QUESTIONED ON THIS PERTINENT POINT, SUPPORTS MY ASSESSMENT OF THE TESTIMONY OF GUSTAFSON ON THE SAME QUESTION, AND THE PROBABILITY THAT ROYSTON WAS TOLD OF THE UNION ACTIVITY OF KEREKES BY GUSTAFSON IS GIVEN ADDED WEIGHT.

ROYSTON SAID HE WENT TO TELL MATTHEWS ON FRIDAY AFTERNOON TO TERMINATE KEREKES, BUT MATTHEWS WAS BUSY IN THE ENGINEERING OFFICE AND TOLD HIM TO WAIT FOR HALF AN HOUR. HOWEVER, AT 5:30 P.M. ROYSTON FOUND MATTHEWS HAD GONE, AND HE DIDN'T SEE HIM. THE EVIDENCE OF MATTHEWS ON THIS POINT IS THAT 'ROYSTON CAME TO SEE ME AT 4 P.M. AND I ASKED HIM TO SEE ME IN THE OFFICE. I FORGOT HE WAS THERE BECAUSE OF AN ENGINEERING PROBLEM.'

ROYSTON THEN WENT HOME AND DEVOTED HIMSELF TO EXHIBIT 8 ON FRIDAY EVENING, 6 NOVEMBER AND SATURDAY MORNING 7 NOVEMBER. THE ENERGETIC LITERARY EFFORT PUT FORTH BY ROYSTON, AS EVIDENCED BY EXHIBIT 8, WAS THE RESULT OF TWO THINGS, ROYSTON TESTIFIED: ONE, THE HOUR-LONG COFFEE DRINKING EPISODE INVOLVING KEREKES AND ANOTHER EMPLOYEE NAMED BOYCE, ON FRIDAY; AND TWO, THE ATTITUDE OF KEREKES TOWARD THE NEW EMPLOYEE. ROYSTON DENIED EXHIBIT 8 WAS WRITTEN AFTER HE GOT NOTICE OF UNION. NOTICE, OF COURSE, WAS RECEIVED ONLY ON MONDAY AT 11 A.M. THE WITNESS SUBSEQUENTLY TESTIFIED THAT HE ADMITTED TO KEREKES AND BOYCE ON FRIDAY THAT HE WAS WRONG ABOUT THE COFFEE INCIDENT THAT DAY. HE ALSO SAID AT THIS POINT THAT "ALL PROBLEM PRESENT ON 15 SEPTEMBER." EXHIBIT 8 DOES NOT MENTION THE DISCUSSIONS WITH THE NEW EMPLOYEE, AND NO SUGGESTION IS MADE THEREIN THAT FIRING IS IMMINENT.

17. THE ISSUING OF EXHIBIT #1 AS AN ACKNOWLEDGMENT OF TERMINATION AS A QUIT THAT WAS FIRST GIVEN TO ADAM KEREKES ON 10 NOVEMBER MAY HAVE BEEN WISHFUL THINKING ON THE PART OF THE COMPANY. EXHIBIT #2, ALSO DATED 10 NOVEMBER, CAREFULLY PHRASES THE TERMINATION AS "RELEASED FROM DUTY", AND NO REASON IS GIVEN.

18. WEIGHING ALL OF THE EVIDENCE AGAINST THE CASE AUTHORITIES CITED BY THE MAJORITY AS THE BASIS FOR THEIR DECISION, I AM DRIVEN TO MAKE AN OPPOSITE FINDING.

19. I FIND THAT ADAM KEREKES WAS DISCHARGED BECAUSE OF HIS UNION ACTIVITY IN VIOLATION OF THE LABOUR RELATIONS ACT, SECTION 50(A) AND I THEREFORE DIRECT HIS RE-EMPLOYMENT IN HIS FORMER OCCUPATION WITHOUT LOSS OF SENIORITY AND WITH FULL COMPENSATION FOR TIME LOST.

18786-70-M: RETAIL CLERKS UNION LOCALS No. 206 AND 486 (APPLICANTS)
V. SUPER CITY DISCOUNT FOODS LIMITED AND LOBLAW GROCETERIAS CO.,
LIMITED AND UNION OF CANADIAN RETAIL EMPLOYEES (RESPONDENTS).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS P. J. O'KEEFFE AND J.E.C. ROBINSON, Q.C..

DECISION OF THE BOARD:

MARCH 9, 1971.

1. THIS IS AN APPLICATION UNDER SECTION 47A OF THE LABOUR RELATIONS ACT WHEREIN THE BOARD DIRECTED THAT A REPRESENTATION VOTE BE TAKEN IN VOTING CONSTITUENCY #1 AS DEFINED IN ITEM 6 OF THE BOARD'S DECISION OF JANUARY 14, 1971 AND VOTING CONSTITUENCY #2 AS DEFINED IN ITEM 9 OF THAT DECISION.

2. BY DECISION DATED FEBRUARY 16, 1971, MR. H.C. DRAPER, EXAMINER, WAS AUTHORIZED TO INQUIRE INTO AND REPORT TO THE BOARD ON THE EMPLOYMENT STATUS OF JAMES DEBLOIS AND JOSEPH MALLON, AND THE BOARD FURTHER DIRECTED THAT THE BALLOT BOXES CONTAINING ALL THE BALLOTS CAST IN THE REPRESENTATION VOTES CONDUCTED IN THIS MATTER SHOULD BE SEALED PENDING THE FURTHER DIRECTION OF THE BOARD.

3. THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT JOSEPH MALLON IS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AT 2433 PRINCESS STREET, KINGSTON, AND ACCORDINGLY HIS NAME WAS REMOVED FROM VOTING CONSTITUENCY #1 AND ADDED TO VOTING CONSTITUENCY #2 REFERRED TO ABOVE. THE BOARD FURTHER NOTES THE AGREEMENT OF THE PARTIES THAT THE APPLICANT WITHDREW ITS CHALLENGE TO THE INCLUSION OF JAMES DEBLOIS' NAME ON THE ELIGIBLE LIST OF VOTERS IN VOTING CONSTITUENCY #1.

4. IT IS NOTED, HOWEVER, THAT PRIOR TO THE AGREEMENT OF THE PARTIES SET OUT ABOVE, JOSEPH MALLON HAD CAST A SEGREGATED BALLOT IN VOTING CONSTITUENCY #1. THE COLOUR OF THE BALLOTS CAST IN VOTING CONSTITUENCY #1 IS DIFFERENT THAN THE COLOUR OF THE BALLOTS CAST IN VOTING CONSTITUENCY #2. IF HIS BALLOT WERE PLACED AMONG THE BALLOTS IN VOTING CONSTITUENCY #2 AT THIS TIME, THE SECRECY OF HIS BALLOT WOULD BE DESTROYED SINCE HIS BALLOT WOULD BE READILY IDENTIFIED BECAUSE OF THE DIFFERENCE IN COLOUR.

5. THE BOARD ACCORDINGLY DIRECTS THAT THE REGISTRAR CAUSE THE BALLOTS CAST BY ALL THOSE ELIGIBLE TO VOTE IN VOTING CONSTITUENCY #1 TO BE COUNTED AND REPORT TO THE BOARD.

6. THE BOARD FURTHER DIRECTS THAT THE REGISTRAR CAUSE ALL THE BALLOTS CAST IN VOTING CONSTITUENCY #2, WITH THE EXCEPTION OF THE SEGREGATED BALLOT CAST BY JOSEPH MALLON, TO BE COUNTED AND REPORT TO THE BOARD.

7. IF THE RESULT OF THE VOTE IN VOTING CONSTITUENCY #2 CAN BE MATERIALLY AFFECTED BY THE SEGREGATED BALLOT CAST BY MR. MALLON, IT MAY BE NECESSARY FOR THE BOARD TO DIRECT THAT A NEW REPRESENTATION VOTE BE TAKEN IN VOTING CONSTITUENCY #2 IN ORDER TO PRESERVE THE SECRECY OF MR. MALLON'S VOTE.

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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING MARCH 1971

BARGAINING AGENTS CERTIFIED DURING MARCH

NO VOTE CONDUCTED

18418-70-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. BOYLES INDUSTRIES LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT AT ORILLIA, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, PERSONNEL MANAGER, ONE SECRETARY TO EACH OF THE FOLLOWING: VICE-PRESIDENT, COMPTROLLER, PERSONNEL MANAGER AND MANAGER OF THE BIT PLANT, AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE APPLICANT." (56 EMPLOYEES IN THE UNIT).

(SEE DECISION [1971] OLRB REP. 111).

18450-70-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. EAST YORK PUBLIC LIBRARY BOARD (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE BOROUGH OF EAST YORK, SAVE AND EXCEPT CHIEF LIBRARIAN, PERSONS ABOVE THE RANK OF CHIEF LIBRARIAN, ASSISTANT CHIEF LIBRARIAN, LIBRARIANS IN CHARGE OF BRANCHES AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (25 EMPLOYEES IN THE UNIT).

(SEE DECISION [1971] OLRB REP. 120).

18591-70-R: INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (APPLICANT) v. YORK UNIVERSITY (RESPONDENT) v. CANADIAN UNION OF PUBLIC EMPLOYEES (INTERVENER).

- AND -

18598-70-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. YORK UNIVERSITY (RESPONDENT) v. INTERNATIONAL UNION UNITED PLANT GUARD WORKERS OF AMERICA LOCAL 1962 (INTERVENER #1) v. INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (INTERVENER #2).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN MAINTENANCE, SERVICES, AND PLANT OPERATIONS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, PERSONS COVERED BY A COLLECTIVE AGREEMENT BETWEEN INTERVENER

#1 AND THE RESPONDENT AND PERSONS COVERED BY A COLLECTIVE AGREEMENT BETWEEN INTERVENER #2 AND THE RESPONDENT." (263 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE SUBMISSIONS OF THE PARTIES).

(SEE DECISION [1971] OLRB REP. 126).

18716-70-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE CITY OF STRATFORD (RESPONDENT) V. THE STRATFORD PROFESSIONAL FIRE FIGHTERS ASSOCIATION LOCAL #534 INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT STRATFORD, SAVE AND EXCEPT CLERK, DEPUTY CITY CLERK, CONFIDENTIAL SECRETARY TO CLERK, TAX COLLECTOR, DEPUTY TAX COLLECTOR, TREASURER, DEPUTY CITY TREASURER, ENGINEER AND DEPUTY HEAD ENGINEER, SUPERINTENDENT OF BOARD OF WORKS, SUPERINTENDENT - CEMETERY, RECREATION DIRECTOR, PARKS BOARD SUPERINTENDENT, WELFARE ADMINISTRATOR, PURCHASING OFFICERS, FOREMAN BOARD OF WORKS - ROAD FOREMAN, FOREMAN BOARD OF WORKS - SEWER FOREMAN, BUILDING INSPECTOR AND PLANNING OFFICER, SUPERVISING TEACHER - CHILD DAY CARE CENTRE, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND ALL PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT ENTERED INTO BETWEEN THE RESPONDENT AND THE CANADIAN UNION OF PUBLIC EMPLOYEES LOCAL 197." (48 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

18849-70-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE BOARD OF EDUCATION FOR THE CITY OF TORONTO (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT #1: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN THE PREPARATION AND SERVING OF MEALS IN CAFETERIAS AND LUNCHROOMS IN THE SENIOR ELEMENTARY, SPECIAL AND SECONDARY SCHOOLS, SAVE AND EXCEPT SENIOR COOKS EMPLOYED IN A SUPERVISORY CAPACITY AT OAKWOOD COLLEGIATE INSTITUTE AND PARKWAY VOCATIONAL SCHOOL, FOOD SERVICE MANAGERS, PERSONS ABOVE THE RANK OF SUCH SENIOR COOKS AND FOOD SERVICE MANAGER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND PERSONS COVERED BY SUBSISTING COLLECTIVE AGREEMENTS BETWEEN THE RESPONDENT AND CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL #63 AND #134." (180 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

UNIT #2: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN THE PREPARATION AND SERVING OF MEALS IN CAFETERIAS AND LUNCHROOMS IN THE SENIOR ELEMENTARY, SPECIAL AND SECONDARY SCHOOLS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, SAVE AND EXCEPT SENIOR COOKS EMPLOYED IN A SUPERVISORY CAPACITY AT OAKWOOD COLLEGIATE INSTITUTE AND PARKWAY VOCATIONAL SCHOOL, FOOD SERVICE MANAGERS, PERSONS ABOVE THE RANK OF SUCH SENIOR COOKS AND FOOD SERVICE MANAGER AND PERSONS COVERED BY SUBSISTING COLLECTIVE AGREEMENTS BETWEEN THE RESPONDENT AND CANADIAN UNION OF

PUBLIC EMPLOYEES, LOCALS #63 AND #134." (104 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

18881-70-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 93 (APPLICANT) V. WILLIAM D'AOUST CONSTRUCTION LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

18911-70-R: SHOPMEN'S LOCAL UNION NO. 757 OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS (A.F. OF L., C.I.O., C.L.C.) (APPLICANT) V. LIVINGSTON KENHAR LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS MANUFACTURING OPERATION AT BRAMPTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE, CLERICAL AND SALES STAFF, SECURITY GUARDS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (30 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES). (THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT PERSONS CLASSIFIED AS TRUCK DRIVERS OPERATING LEASED VEHICLES ARE NOT EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT).

18919-70-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. IAN DOUGLAS LTD. TRADING AS DRYDEN CLEANERS & LAUNDERERS (RESPONDENT) V. EMPLOYEE (OBJECTOR).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT DRYDEN REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, SAVE AND EXCEPT SUPERINTENDENT AND PERSONS ABOVE THE RANK OF SUPERINTENDENT." (5 EMPLOYEES IN THE UNIT).

(SEE DECISION [1971] OLRB REP. 135).

18947-70-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. DURHACK MASONRY (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF RAINY RIVER, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

18982-70-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. LUCKNOW FURNITURE COMPANY (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT LUCKNOW, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (42 EMPLOYEES IN THE UNIT).

2-70-R: HOTELS, CLUBS, RESTAURANTS, TAVERNS EMPLOYEES UNION LOCAL, 261, OTTAWA, AFFILIATED WITH AFL-CIO AND C.L.C. (APPLICANT) V. SHERATON E1 MIRADOR MOTOR INN OTTAWA (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OTTAWA, SAVE AND EXCEPT ASSISTANT MANAGER, PERSONS ABOVE THE RANK OF ASSISTANT MANAGER, OFFICE STAFF, CHEF MAITRE D', HOUSEKEEPER, HOSTESS, HEAD BARTENDER AND MAINTENANCE MANAGER." (49 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR THE PURPOSE OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES AS FOLLOWS: (A) THAT DESK CLERKS ARE EXCLUDED FROM THE BARGAINING UNIT; (B) THAT SWITCHBOARD OPERATORS AND CASHIERS ARE INCLUDED IN THE BARGAINING UNIT).

8-70-R: HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS' INTERNATIONAL UNION, RESTAURANT, CAFETERIA AND TAVERN EMPLOYEES UNION, LOCAL 254 (APPLICANT) V. CANADA CATERING CO. LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES AT THE COMPANY'S OPERATIONS IN THE DEPARTMENT OF HIGHWAYS BUILDING AT HIGHWAY 401 AND KEELE STREETS IN THE MUNICIPALITY OF METROPOLITAN TORONTO, SAVE AND EXCEPT ASSISTANT MANAGER, PERSONS ABOVE THE RANK OF ASSISTANT MANAGER, HEAD CHEF, HEAD BAKER AND OFFICE STAFF." (20 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

13-70-R: GENERAL TRUCK DRIVERS' LOCAL 938 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. PROVINCIAL TANKERS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT AND WORKING OUT OF THE TOWNSHIP OF VAUGHAN, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (29 EMPLOYEES IN THE UNIT).

16-70-R: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (APPLICANT) V. LAFRAMBOISE INDUSTRIAL MAINTENANCE AND WELDING, A DIVISION OF ROBERT CLARE ENTERPRISES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT CORNWALL, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (4 EMPLOYEES IN THE UNIT).

29-70-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. EDESTIA CONSTRUCTION CO. LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HURON PARK IN THE COUNTY OF HURON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (9 EMPLOYEES IN THE UNIT).

41-70-R: CENTRAL ONTARIO DISTRICT COUNCIL, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. BENNETT-PRATT LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF SIMCOE, THE DISTRICT OF MUSKOKA AND THE TOWNSHIPS OF RAMA, MARA AND THORAH IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

47-70-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) V. NESRALLAH INVESTMENTS LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (9 EMPLOYEES IN THE UNIT).

48-70-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 93 (APPLICANT) V. NESRALLAH INVESTMENTS LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

58-70-R: INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA AFL-CIO-CLC (APPLICANT) V. CARIBBEAN DISTILLERS LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT IN THE TOWNSHIP OF CHINGUACOUSY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (8 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

60-70-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. BITINI CONSTRUCTION COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF WENTWORTH AND

THE TOWNSHIP OF NASSAGAWEYA AND THE TOWN OF BURLINGTON IN THE COUNTY OF HALTON ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

66-70-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. J. B. CARROLL ELECTRIC LIMITED (RESPONDENT).

UNIT: "ALL ELECTRICIANS AND ELECTRICIANS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF NIAGARA AND THE COUNTY OF HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

70-70-R: RETAIL AND FOOD EMPLOYEES LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. INTERCITY FOOD SERVICES INC. (RESPONDENT).

UNIT #1: "ALL EMPLOYEE OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT RESTAURANT MANAGER, PERSONS ABOVE THE RANK OF RESTAURANT MANAGER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND THOSE "FULL-TIME" EMPLOYEES COVERED BY THE PREVIOUS CERTIFICATE OF THE BOARD, FILE NO. 13404-67-R." (4 EMPLOYEES IN THE UNIT).

UNIT #2: "ALL EMPLOYEES OF THE RESPONDENT AT WINDSOR REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, SAVE AND EXCEPT THOSE "PART-TIME" EMPLOYEES COVERED BY THE PREVIOUS CERTIFICATE OF THE BOARD, FILE NO. 13404-67-R." (7 EMPLOYEES IN THE UNIT).

72-70-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 837 (APPLICANT) V. CON-DRAIN COMPANY LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WENTWORTH AND THE TOWNSHIP OF NASSAGAWEYA AND THE TOWN OF BURLINGTON IN THE COUNTY OF HALTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (9 EMPLOYEES IN THE UNIT).

74-70-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 837 (APPLICANT) V. L. BELANGER CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF NIAGARA AND THE COUNTY OF HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (12 EMPLOYEES IN THE UNIT).

83-70-R: UNITED TEXTILE WORKERS OF AMERICA (APPLICANT) V. JARO MANUFACTURING COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WOODSTOCK, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (24 EMPLOYEES IN THE UNIT).

85-70-R: BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 183, A.F. OF L. - C.I.O. - C.L.C. (APPLICANT) V. CONSOLIDATED BUILDING MAINTENANCE COMPANY, DIVISION OF CONSOLIDATED MAINTENANCE SERVICE LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT THE NATIONAL ARTS CENTRE, 1 CONFEDERATION SQUARE, OTTAWA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (27 EMPLOYEES IN THE UNIT).

86-70-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. TOWNSHIP OF NOTTAWASAGA (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF NOTTAWASAGA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (7 EMPLOYEES IN THE UNIT).

88-70-R: THE LUMBER AND SAWMILL WORKERS' UNION, LOCAL 2995, OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. CLOUTIER BROTHERS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS BUSH OPERATIONS IN THE TOWNSHIP OF ALEXANDRA AND THOSE TOWNSHIPS IMMEDIATELY ADJACENT THERE-TO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, SCALERS AND OFFICE STAFF." (38 EMPLOYEES IN THE UNIT).

93-70-R: CHATHAM CONSTRUCTION WORKERS ASSOCIATION, LOCAL NO. 53, AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. ROSE-VILLE GARDENS OF WINDSOR LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS, CARPENTERS' APPRENTICES AND ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF ESSEX AND KENT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

99-70-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1190 (APPLICANT) V. AVA CARPENTERS (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF

PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (12 EMPLOYEES).

102-70-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. UPPER CANADA GLASS (RESPONDENT).

UNIT: "ALL GLAZIERS AND GLAZIERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

104-70-R: TEXTILE WORKERS UNION OF AMERICA, AFL-CIO-CLC (APPLICANT) V. WILSON SPORTS EQUIPMENT CANADA, LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BELLEVILLE, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF, LABORATORY EMPLOYEES, TECHNICIANS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (22 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

108-70-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. UPPER CANADA GLASS (RESPONDENT).

UNIT: "ALL GLAZIERS AND GLAZIERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF SIMCOE, THE DISTRICT OF MUSKOKA AND THE TOWNSHIPS OF RAMA, MARA AND THORAH IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

144-70-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS LOCAL UNION 721 (APPLICANT) V. CENTRAL RIGGING & CONTRACTING CO. (CANADA) LTD. (RESPONDENT).

UNIT: "ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

150-70-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 493 (APPLICANT) V. POWER TEL UTILITIES CONTRACTORS LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT WITHIN A RADIUS OF THIRTY-FIVE MILES FROM THE CITY OF SUDBURY FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

APPLICATIONS CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

18901-70-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. R. J. SIMPSON MANUFACTURING COMPANY (CANADA) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF CAMDEN, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (110 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES OF PERSONS ON REVISED	79
VOTERS' LIST	
NUMBER OF PERSONS WHO CAST BALLOTS	78
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	72
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF R.J. SIMPSON BARGAINING COMMITTEE	6

18964-70-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. WINDSOR PACKING COMPANY LIMITED (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 772 (INTERVENER).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED IN THE BOILER ROOM OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT CHIEF ENGINEER." (2 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS'		2
LIST		
NUMBER OF PERSONS WHO CAST BALLOTS	2	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	2	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF INTERVENER	0	

1-70-R: INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (APPLICANT) V. KEMPTVILLE DISTRICT HOSPITAL (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS HOSPITAL IN KEMPTVILLE, SAVE AND EXCEPT OFFICE STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS, (DEPART-

MENT HEADS) PERSONS ABOVE THE RANK OF SUPERVISOR, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING SCHOOL VACATIONS, PLANT SUPERINTENDENT, ASSISTANT PLANT SUPERINTENDENT AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 AND PERSONS COVERED BY LABORATORY AND TECHNICIANS' ASSOCIATIONS." (32 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT TELEPHONE OPERATORS ARE INCLUDED IN THE VOTING CONSTITUENCY AND THAT ADMITTING CLERKS, MEDICAL RECORDS CLERKS AND WARD CLERK ARE EXCLUDED FROM THE VOTING CONSTITUENCY UNDER THE EXCLUSION OF OFFICE STAFF)."

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		30
NUMBER OF PERSONS WHO CAST BALLOTS		30
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	17	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	13	

APPLICANTS CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

17744-70-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1747, AFFILIATED WITH THE CARPENTERS' DISTRICT COUNCIL OF TORONTO AND VICINITY (APPLICANT) V. DURABLE DRYWALL LTD. (RESPONDENT) V. THE WOOD, WIRE AND METAL LATHERS' INTERNATIONAL UNION, LOCAL 562 (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN INSTALLATION AND ERECTION OF DRY WALL AND ALL METAL COMPONENTS TO RECEIVE DRY WALL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (42 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		42
NUMBER OF PERSONS WHO CAST BALLOTS		42
NUMBER OF SPOILED BALLOTS	1	
BALLOTS SEGREGATED AND NOT COUNTED	2	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	2	
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	37	

18682-70-R: NORTHERN ELECTRIC EMPLOYEES ASSOCIATION (APPLICANT) V. MICROSYSTEMS INTERNATIONAL LIMITED (RESPONDENT) V. THE TECHNICAL EMPLOYEES ASSOCIATION OF MICROSYSTEMS INTERNATIONAL LIMITED (INTERVENER #1) V. INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (INTER-

VENER #2) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON, SAVE AND EXCEPT SUPERVISORS, THOSE ABOVE THE RANK OF SUPERVISOR, ENGINEERS AND ENGINEERING TECHNICIANS, ACCOUNTING AND BUSINESS SYSTEMS STAFF, SPECIALISTS, PERSONNEL STAFF AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND INTERVENER #2." (589 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		489
NUMBER OF PERSONS WHO CAST BALLOTS	463	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	343	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	120	

(SEE DECISION [1971] OLRB REP. 131).

18783-70-R: THE LUMBER AND SAWMILL WORKERS' UNION, LOCAL 2995 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. CUSTOM SAWMILL (HEARST) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING AT AND OUT OF ITS SAW-MILL OPERATIONS AT HEARST, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (79 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS'		
LIST		79
NUMBER OF PERSONS WHO CAST BALLOTS	73	
NUMBER OF SPOILED BALLOTS	1	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	47	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	25	

18978-70-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. SIMCOE MECHANICAL CONTRACTING LTD. (RESPONDENT) V. UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL 599 (INTERVENER).

UNIT: "ALL PLUMBERS, PLUMBERS' APPRENTICES, STEAMFITTERS AND STEAMFITTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN SIMCOE COUNTY, DISTRICT OF MUSKOKA, TOWNSHIPS OF RAMA, MARA AND THORAN IN THE COUNTY OF ONTARIO AND THE TOWNSHIPS OF CARLING, FERGUSON, McDougall, McKellar, Christie, Foley, Conger and Humphrey in the District of Parry Sound,

INCLUDING ALL OF THE MUNICIPALITIES CONTAINED THEREIN, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (9 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		8
NUMBER OF PERSONS WHO CAST BALLOTS	8	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	5	
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	3	

18980-70-R: CHRISTIAN TRADE UNIONS OF CANADA (LOCAL #6) (APPLICANT) V. BESSELMING PLUMBING & HEATING LIMITED (RESPONDENT).

UNIT: "ALL PLUMBERS AND PLUMBERS' APPRENTICES, STEAMFITTERS AND STEAMFITTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WENTWORTH AND THE TOWNSHIP OF NASSAGAWEYA AND THE TOWN OF BURLINGTON IN THE COUNTY OF HALTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		3
NUMBER OF PERSONS WHO CAST BALLOTS	3	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	3	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	0	

APPLICATIONS FOR CERTIFICATION DISMISSED DURING MARCH

NO VOTE CONDUCTED

18784-70-R: CAMPBELL/MAILOMATIC EMPLOYEES ASSOCIATION (APPLICANT) V. CAMPBELL REPRODUCTIONS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN OTTAWA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, INSPECTORS, PRODUCTION CONTROL DEPARTMENT EMPLOYEES, SECURITY GUARDS, OFFICE STAFF AND PERSONS EMPLOYED REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK." (65 EMPLOYEES IN THE UNIT).

(SEE DECISION [1971] OLRB REP. 134).

18930-70-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. CANADA SAFEWAY LIMITED (RESPONDENT). (27 EMPLOYEES).

18958-70-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. M. LOEB (LONDON) LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT #1: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES IN THE CITY OF WATERLOO, SAVE AND EXCEPT ASSISTANT STORE MANAGER, PERSONS ABOVE THE RANK OF ASSISTANT STORE MANAGER, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (8 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (CERTIFIED).

UNIT #2: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES IN THE CITY OF WATERLOO REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (12 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (DISMISSED).

18971-70-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. SUDBURY GENERAL HOSPITAL OF THE IMMACULATE HEART OF MARY (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (INTERVENER). (56 EMPLOYEES).

3-70-R: LOCAL UNION NO. 304, INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA AFL-CIO-CLC (APPLICANT) V. L.J. MCGUINNESS AND CO. LIMITED (RESPONDENT). (91 EMPLOYEES).

4-70-R: LOCAL UNION NO. 304, INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA AFL-CIO-CLC (APPLICANT) V. CARIBBEAN DISTILLERS LIMITED (RESPONDENT). (8 EMPLOYEES).

59-70-R: INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) V. CHESBAR IRON POWDER LIMITED (RESPONDENT). (21 EMPLOYEES).

61-70-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL UNION 1946 (APPLICANT) V. SIFTON PROPERTIES LIMITED (2 EMPLOYEES).

67-70-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. COBBLE CONSTRUCTION LTD. (RESPONDENT). (6 EMPLOYEES).

94-70-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. BARLOCK LIMITED, TEXMONT PROJECT (RESPONDENT). (49 EMPLOYEES).

109-70-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 493 (APPLICANT) V. FARQUHAR CONSTRUCTION LIMITED (RESPONDENT). (3 EMPLOYEES).

115-70-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL 2466 (APPLICANT) V. B.D. McDERMOTT CONSTRUCTION CO. LTD. (RESPONDENT). (2 EMPLOYEES).

134-70-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. EASTERN CONSTRUCTION CO. LTD. (RESPONDENT). (3 EMPLOYEES).

145-70-R: CANADIAN UNION OF GENERAL EMPLOYEES (APPLICANT) V. CENTRAL HOSPITAL (RESPONDENT) V. CANADIAN UNION OF OPERATING ENGINEERS (INTERVENER). (131 EMPLOYEES).

CERTIFICATION DISMISSED SUBSEQUENT TO PRE-HEARING VOTE

31-70-R: UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL CIO CLC (APPLICANT) V. THE GEO. CLUTHE MANUFACTURING CO. LIMITED (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT WATERLOO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (113 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		114
NUMBER OF PERSONS WHO CAST BALLOTS	109	
NUMBER OF SPOILED BALLOTS	5	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	54	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	50	

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

18471-70-R: OFFICE & PROFESSIONAL EMPLOYEES INTERNATIONAL UNION LOCAL 131 (APPLICANT) V. GESTETNER (CANADA) LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING AT OR OUT OF METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS, DEPARTMENT HEADS AND PERSONS ABOVE THE RANK OF SUPERVISOR OR DEPARTMENT HEAD." (216 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		206
NUMBER OF PERSONS WHO CAST BALLOTS	206	
NUMBER OF SPOILED BALLOTS	4	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	68	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	134	

18695-70-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 2486 (APPLICANT) V. ROY CONSTRUCTION (NORTH BAY) LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A FIFTY MILE RADIUS OF THE TIMMINS FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND SHOP EMPLOYEES." (18 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		32
NUMBER OF PERSONS WHO CAST BALLOTS		32
NUMBER OF SPOILED BALLOTS	1	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	7	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	24	

18799-70-R: LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, S.E.I.U. (APPLICANT) V. THE SISTERS OF ST. JOSEPH OF THE DIOCESE OF LONDON IN ONTARIO, AS THE OWNER AND OPERATOR OF ST. JOSEPH'S HOSPITAL, LONDON, ONTARIO (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL LAY EMPLOYEES OF THE RESPONDENT AT THEIR HOSPITAL IN LONDON, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANKS OF SUPERVISOR AND FOREMAN, CHIEF ENGINEER, HEAD CHEF, OFFICE AND CLERICAL STAFF, PERSONS ENGAGED IN RESEARCH PROJECTS FOR OR OF THE UNIVERSITY OF WESTERN ONTARIO OR ANY OUTSIDE ORGANIZATION, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (473 EMPLOYEES IN THE UNIT). (THE BOARD FURTHER DECLARED IN ITS DECISION DATED JANUARY 21ST, 1971: THAT THE TERM TECHNICAL PERSONNEL COMPRISES GRADUATE AND UNDERGRADUATE SPEECH THERAPISTS, AUDIOLOGISTS, PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, ELECTRO-ENCEPHALOGRAPHISTS, ELECTRIC SHOCK THERAPISTS, LABORATORY, RADIOLOGICAL, PATHOLOGICAL, CARDIOLOGICAL, INHALATION THERAPY, ANESTHESIA AND GLAUCOMA TECHNICIANS AND PERSONS IN TRAINING TO BECOME SUCH TECHNICIANS.) (THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE ASSISTANT HEAD CHEF IS NOT INCLUDED IN THE BARGAINING UNIT AND THAT WARD CLERKS, ADMITTING CLERKS, RECEPTIONISTS, INFORMATION CLERKS, MAIL CLERKS AND MESSENGERS, CHASHIERS, LIBRARIANS AND SWITCHBOARD OPERATORS ARE EXCLUDED FROM THE BARGAINING UNIT UNDER THE CLASSIFICATION OF OFFICE AND CLERICAL STAFF.)

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		408
NUMBER OF PERSONS WHO CAST BALLOTS	366	
NUMBER OF SPOILED BALLOTS	2	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	136	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	228	

18843-70-R: OTTAWA TYPOGRAPHICAL UNION, No. 102 (APPLICANT) V. LE DROIT LTEE (RESPONDENT) V. LE SYNDICAT DE L'INDUSTRIE DE L'IMPRIMERIE DE LA REGION OTTAWA-HULL (INTERVENER #1) V. LITHOGRAPHERS & PHOTOENGRAVERS INTERNATIONAL UNION, LOCAL 224 (INTERVENER #2).

VOTING CONSTITUENCY: "ALL EMPLOYEES IN THE NEWSPAPER SHOP (COMPOSITION, PROOF-READING - TRANSLATION, STEREOTYPING, PRESSWORK, MAILING AND KLISCHOGRAPH), SAVE AND EXCEPT FOREMEN AND THEIR ASSISTANTS." (73 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		67
NUMBER OF PERSONS WHO CAST BALLOTS	65	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	24	
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER #1 LE SYNDICAT DE L'INDUSTRIE DE L'IMPRIMERIE DE LA REGION OTTAWA-HULL	41	

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING MARCH

18360-70-R: WIRCO PRODUCTS LIMITED (EMPLOYER) V. THE INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW (RESPONDENT). (NO EMPLOYEES).

5-70-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE TRUSTEES OF THE OTTAWA CIVIC HOSPITAL (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (INTERVENER). (15 EMPLOYEES).

34-70-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. ALCAN ALUMINUM COMPANY OF CANADA WIRE & CABLE DIVISION, BRACEBRIDGE WORKS (RESPONDENT). (4 EMPLOYEES).

82-70-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. BARLOCK LIMITED, TEXMOND PROJECT (RESPONDENT). (35 EMPLOYEES).

91-70-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (AP-

PLICANT) V. TRIPP CONSTRUCTION LIMITED (RESPONDENT) V. TEAMSTERS' LOCAL UNION NO. 230, READY MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS (INTERVENER). (12 EMPLOYEES).

92-70-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. W. B. BENNETT PAVING & MATERIALS LIMITED (RESPONDENT) V. TEAMSTERS' LOCAL UNION NO. 230, READY MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS (INTERVENER). (23 EMPLOYEES).

116-70-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 527 (APPLICANT) V. WESMAN CONSTRUCTION (OTTAWA) LIMITED (RESPONDENT). (35 EMPLOYEES).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED

OF DURING MARCH

18138-70-R: EDMOND BEATTY, HERMANN MORIN, LEON DESCHAMPS, SERAFIM DA COSTA, REGIS VERVILLE, FABIEN BRISSON, ROLLAND HUMBERT, REAL MORIN, RONALD M. LARABEE, GAETAN MORIN, JEAN RIOUX, ARMAND COUTURE, MARCEL CLOUTIER, JEAN-LOUIS MORIN, JEAN GUY JACQUES, GILLES MORIN, JACQUES PELLETIER, CALIXTE MORIN, MARCISSE BELANGER, ROMIO TALBOT, PAUL LEONARD, GEORGES RIOUX, DENIS F. CHEFF, YVES DROVIN, GILLES DUMONT, J.C. BOUCHARD (APPLICANTS) V. CANADIAN CONSTRUCTION, BUILDING MAINTENANCE AND GENERAL WORKERS' UNION (N.C.C.L.) (RESPONDENT). (31 EMPLOYEES). (GRANTED).

(SEE DECISION [1971] OLRB REP. 141).

18379-70-R: R. FORGET AND A GROUP OF EMPLOYEES (APPLICANTS) V. RETAIL CLERKS UNION, LOCAL 486 (RESPONDENT) V. DOMINION STORES LIMITED (INTERVENER). (GRANTED).

UNIT: "ALL EMPLOYEES OF DOMINION STORES LIMITED AT ITS RETAIL STORES IN CORNWALL AND SUBURBAN AREA WHO ARE REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS HIRED FOR THE SCHOOL VACATION PERIOD." (17 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED
VOTERS' LIST

6

NUMBER OF PERSONS WHO CAST BALLOTS

6

NUMBER OF BALLOTS MARKED IN FAVOUR
OF RESPONDENT

0

NUMBER OF BALLOTS MARKED AGAINST
RESPONDENT

6

18883-70-R: THE CANADIAN UNION OF INDUSTRIAL WORKERS (APPLICANT) V. GILBARCO EMPLOYEES' UNION (RESPONDENT) V. GILBARCO CANADA LIMITED (INTERVENER). (150 EMPLOYEES). (DISMISSED).

(SEE DECISION [1971] OLRB REP. 155).

127-70-R: RICHARD JOHN GULKA (APPLICANT) V. TEXTILE WORKERS UNION OF AMERICA, CLC, AFL-CIO (RESPONDENT) V. VAN RAALTE OF CANADA, LIMITED (INTERVENER). (69 EMPLOYEES). (GRANTED).

APPLICATION FOR DECLARATION OF SUCCESSOR STATUS DISPOSED OF DURING

MARCH

12-70-R: AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. CANADIAN DRESSED MEATS LIMITED (RESPONDENT). (GRANTED).

APPLICATION FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING

MARCH

56-70-U: DUPLATE CANADA LIMITED (APPLICANT) V. THOSE PERSONS NAMED IN SCHEDULES "A" TO "D" ATTACHED HERETO (RESPONDENTS). (WITHDRAWN).

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING MARCH

18735-70-U: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. FIELDING LUMBER COMPANY LIMITED (RESPONDENT). (GRANTED).

(SEE DECISION [1971] OLRB REP. 162).

18991-70-U: ALDERSHOT INDUSTRIAL INSTALLATIONS LIMITED (APPLICANT) V. THOMAS HAND AND THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA LOCAL NUMBER 67 (RESPONDENTS). (WITHDRAWN).

25-70-U: LAUNDRY, DRY CLEANING & DYE HOUSE WORKERS' INTERNATIONAL UNION, LOCAL 351 (APPLICANT) V. VAIL'S SERVICES CO. LIMITED AND MR. JOHN SCHERER (RESPONDENTS). (DISMISSED).

(SEE DECISION [1971] OLRB REP. 163).

71-70-U: UNITED STEEL WORKERS OF AMERICA (APPLICANT) V. REDI STEEL PRODUCTS LIMITED CARRYING ON BUSINESS UNDER THE NAME AND STYLE OF TORONTO

STEEL FABRICATORS (RESPONDENT). (GRANTED).

COMPLAINTS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE) DISPOSED OF

DURING MARCH

18512-70-U: TORONTO TYPOGRAPHICAL UNION, NO. 91 (COMPLAINANT) V. WILLOW PRESS (RESPONDENT). (WITHDRAWN).

18672-70-U: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO-CLC (COMPLAINANT) V. ALUMINUM COMPANY OF CANADA, LTD. (ALCAN CANADA PRODUCTS) (RESPONDENT). (DISMISSED).

(SEE DECISION [1971] OLRB REP. 167).

18861-70-U: FUR, LEATHER, SHOE & ALLIED WORKERS' UNION, LOCAL 82, OF THE AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO, CLC (COMPLAINANT) V. LORRAINE SHOE CO. LIMITED (RESPONDENT). (WITHDRAWN).

18969-70-U: RETAIL CLERKS INTERNATIONAL ASSOCIATION (COMPLAINANT) V. M. LOEB (LONDON) LTD. (RESPONDENT). (WITHDRAWN).

18992-70-U: RETAIL CLERKS INTERNATIONAL ASSOCIATION (COMPLAINANT) V. M. LOEB (LONDON) LTD. (RESPONDENT). (WITHDRAWN).

46-70-U: INTERNATIONAL CHEMICAL WORKERS UNION (COMPLAINANT) V. ADVANCED WIRE DIE LIMITED (RESPONDENT). (WITHDRAWN).

49-70-U: RETAIL CLERKS INTERNATIONAL ASSOCIATION (COMPLAINANT) V. ZEHR'S MARKETS LTD. (RESPONDENT). (WITHDRAWN).

96-70-U: (THE CORPORATION OF) THE BOARD OF GOVERNORS OF THE RIVERDALE HOSPITAL (APPLICANT) V. THE CANADIAN UNION OF OPERATING ENGINEERS, LOCAL 101 (RESPONDENT). (WITHDRAWN).

APPLICATIONS FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT

18993-70-M: WHITAKER CABLE OF CANADA, LIMITED (COMPANY) V. INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, A.F.L.-C.I.O.-C.L.C., AND ITS LOCAL 574 (TRADE UNION). (GRANTED).

101-70-M: CENTRALAB CANADA LIMITED (COMPANY) V. THE INTERNATIONAL UNION OF ELECTRICAL RADIO AND MACHINE WORKERS, AFL, CIO, CLC., AND ITS LOCAL 572 (TRADE UNION). (GRANTED).

APPLICATIONS UNDER SECTION 47A DISPOSED OF DURING MARCH

18853-70-M: ALEXANDER CENTRE INDUSTRIES LIMITED (APPLICANT) V. READY-MIX, BUILDING SUPPLY, HYDRO & CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS, TEAMSTERS LOCAL UNION 230 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA; THE UNITED STEELWORKERS OF AMERICA (RESPONDENTS). (GRANTED).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE APPLICANT EMPLOYED AT OR WORKING OUT OF THE DISTRICT OF SUDBURY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF."

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		113
NUMBER OF PERSONS WHO CAST BALLOTS	111	
BALLOTS SEGREGATED AND NOT COUNTED	2	
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT, UNITED STEELWORKERS OF AMERICA	98	
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT, READY-MIX, BUILDING SUPPLY, HYDRO & CONSTRUCTION DRIV- ERS, WAREHOUSEMEN AND HELPERS, TEAMSTERS LOCAL UNION 230 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA.	11	

18945-70-M: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA - UAW AND ITS LOCALS 1525 (LONDON), 1530 (BELLEVILLE), AND 1535 (BRAMALEA) (APPLICANTS) V. NORTHERN ELECTRIC COMPANY LIMITED; BELL CANADA-NORTHERN ELECTRIC RESEARCH LIMITED (RESPONDENTS). (DISMISSED).

JURISDICTIONAL DISPUTE

18994-70(A)-JD: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1059 (COMPLAINANT) V. INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL UNION NO. 700 AND BRICKLAYERS, MASONS, TILE-SETTERS AND TERRAZZO LAYERS INTERNATIONAL UNION LOCAL NO. 6 AND LONDON PRECAST PRODUCTS LIMITED (RESPONDENTS). (WITHDRAWN).

REFERENCE TO BOARD PURSUANT TO SECTION 79A

18329-70-M: WIRCO PRODUCTS LTD. (EMPLOYER) V. THE INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW (TRADE UNION). (DISMISSED).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

18362-70-R: TORONTO TYPOGRAPHICAL UNION, No. 91 (APPLICANT) V. WILLOW PRESS (RESPONDENT) V. Local #28, INTERNATIONAL BROTHERHOOD OF BOOKBINDERS (INTERVENER #1) V. TORONTO PRINTING PRESSMEN & ASSISTANTS' UNION No. 10 (INTERVENER #2) V. GROUP OF EMPLOYEES (OBJECTORS). (REQUEST DENIED).

18784-70-R: CAMPBELL/MAILOMATIC EMPLOYEES ASSOCIATION (APPLICANT) V. CAMPBELL REPRODUCTIONS LIMITED (RESPONDENT). (REQUEST DENIED).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - JURISDICTIONALDISPUTE

168-70-JD: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, Local 506 (COMPLAINANT) V. UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, Local 46 AND COAST-TO-COAST DIAMOND DRILLING & CONTRACTING CO. LTD., (RESPONDENTS). (REQUEST DENIED).

STATISTICAL TABLES - FISCAL YEAR 1970-71

TABLE I

APPLICATIONS AND COMPLAINTS FILED WITH THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER FILED		
	FISCAL YEAR 1970-71	FISCAL YEAR 1970-71	FISCAL YEAR 1969-70
I. CERTIFICATION	203	1014	1049
II. DECLARATION TERMINATING BARGAINING RIGHTS	10	74	89
III. DECLARATION OF SUCCESSOR STATUS	5	23	20
IV. DECLARATION THAT STRIKE UNLAWFUL	13	72	57
V. DECLARATION THAT LOCK-OUT UNLAWFUL	2	5	6
VI. CONSENT TO PROSECUTE	49	174	145
VII. COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	28	145	173
VIII. MISCELLANEOUS	<u>52</u>	<u>125</u>	<u>89</u>
TOTAL	362	1632	1628
	<u><u> </u></u>	<u><u> </u></u>	<u><u> </u></u>

TABLE II

HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER		
	FISCAL YEAR 1970-71	FISCAL YEAR 1970-71	FISCAL YEAR 1969-70
HEARINGS AND CONTINUATION OF HEARINGS BY THE BOARD	201	1038	1236

TABLE IIIAPPLICATIONS AND COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR RELATIONSBOARD BY MAJOR TYPES

	NUMBER DISPOSED OF		
	FISCAL YEAR 1970-71	FISCAL YEAR 1970-71	FISCAL YEAR 1969-70
I. CERTIFICATION	186	1074	999
II. DECLARATION TERMINATING BARGAINING RIGHTS	13	81	83
III. DECLARATION OF SUCCESSOR STATUS	2	21	32
IV. DECLARATION THAT STRIKE UNLAWFUL	13	75	56
V. DECLARATION THAT LOCK-OUT UNLAWFUL	1	5	6
VI. CONSENT TO PROSECUTE	43	180	137
VII. COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	30	156	179
VIII. MISCELLANEOUS	<u>20</u>	<u>107</u>	<u>105</u>
TOTAL	308	1699	1597
	<u>=====</u>	<u>=====</u>	<u>=====</u>

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARDBY TYPE AND DISPOSITION

	<u>NUMBER OF APPLICATIONS</u>			<u>NUMBER OF EMPLOYEES*</u>		
	<u>FISCAL YEAR</u> <u>1970-71</u>	<u>1970-71</u>	<u>1969-70</u>	<u>FISCAL YEAR</u> <u>1970-71</u>	<u>1970-71</u>	<u>1969-70</u>
<u>I. CERTIFICATION</u>						
GRANTED	116	703	675	4493	21987	21984
DISMISSED	51	259	210	3305	10451	11652
WITHDRAWN	<u>19</u>	<u>112</u>	<u>114</u>	<u>594</u>	<u>3333</u>	<u>2136</u>
TOTAL	186	1074	999	8392	35771	35772
	==	==	==	==	==	==
<u>II. TERMINATION</u> <u>OF BARGAINING</u> <u>RIGHTS</u>						
GRANTED	8	44	37	140	1139	1439
DISMISSED	4	27	45	229	1994	591
WITHDRAWN	<u>1</u>	<u>10</u>	<u>1</u>	<u>371</u>	<u>1127</u>	<u>68</u>
TOTAL	13	81	83	740	4260	2098
	=	=	=	=	=	=

*THESE FIGURES REFER TO THE NUMBER OF EMPLOYEES DIRECTLY AFFECTED AND ARE BASED ON THE NUMBER OF EMPLOYEES IN THE BARGAINING UNITS AT THE TIME THE APPLICATIONS FOR CERTIFICATION WERE FILED WITH THE BOARD. TOTALS FOR APPLICATIONS DISMISSED AND WITHDRAWN ARE APPROXIMATE.

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD
BY TYPE AND DISPOSITION (CONTINUED)

		<u>FISCAL YEAR</u>	
		<u>1970-71</u>	<u>1970-71</u> <u>1969-70</u>
III.	<u>DECLARATION THAT STRIKE</u>		
	<u>UNLAWFUL</u>		
	GRANTED	2	6
	DISMISSED	-	2
	WITHDRAWN	<u>11</u>	<u>67</u>
	TOTAL	13	75
		<u>==</u>	<u>==</u>
IV.	<u>DECLARATION THAT LOCKOUT</u>		
	<u>UNLAWFUL</u>		
	GRANTED	-	-
	DISMISSED	-	2
	WITHDRAWN	<u>1</u>	<u>3</u>
	TOTAL	1	5
		<u>==</u>	<u>==</u>
V.	<u>CONSENT TO PROSECUTE</u>		
	GRANTED	7	38
	DISMISSED	4	22
	WITHDRAWN	<u>32</u>	<u>120</u>
	TOTAL	43	180
		<u>==</u>	<u>==</u>
VI.	<u>COMPLAINT OF UNFAIR</u>		
	<u>PRACTICE IN EMPLOYMENT</u>		
	<u>(SECTION 65)</u>		
	GRANTED	2	10
	DISMISSED	7	38
	WITHDRAWN	<u>21</u>	<u>108</u>
	TOTAL	30	156
		<u>==</u>	<u>==</u>

TABLE V

REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED OF
BY THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES		
	FISCAL YEAR 1970-71	FISCAL YEAR 1970-71	FISCAL YEAR 1969-70
<u>CERTIFICATION AFTER VOTE*</u>			
PRE-HEARING VOTE	3	13	24
POST-HEARING VOTE	9	43	36
BALLOTS NOT COUNTED	-	-	-
 <u>DISMISSED AFTER VOTE</u>			
PRE-HEARING VOTE	3	13	15
POST-HEARING VOTE	8	49	52
BALLOTS NOT COUNTED	-	3	1
TOTAL	23	121	128
	=	=	=

*INCLUDES APPLICANT-INTERVENER APPLICATIONS IN WHICH BOTH APPLICANT AND INTERVENER APPLY FOR A NEW UNIT AND EITHER APPLICANT OR INTERVENER IS CERTIFIED.

TABLE VI

REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF BY THE
ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES		
	FISCAL YEAR 1970-71	FISCAL YEAR 1970-71	FISCAL YEAR 1969-70
*RESPONDENT UNION SUCCESSFUL	-	3	5
RESPONDENT UNION UNSUCCESSFUL	5	30	16
TOTAL	5	33	21
	=	=	=

*IN TERMINATION PROCEEDINGS WHERE A VOTE IS TAKEN THE APPLICANT IS A GROUP OF EMPLOYEES OR THE EMPLOYER; THE INCUMBENT UNION IS THUS THE RESPONDENT.

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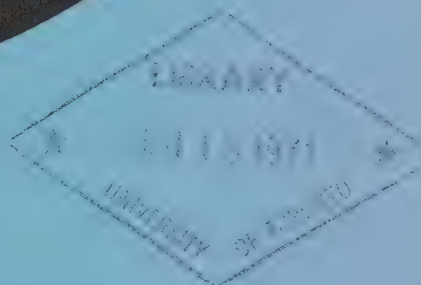
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Monthly Report



ONTARIO LABOUR RELATIONS BOARD

CASSELL
964

ONTARIO LABOUR RELATIONS BOARD REPORTS

A MONTHLY SERIES OF DECISIONS FROM THE

ONTARIO LABOUR RELATIONS BOARD

CITED [1971] OLRB REP.

ABANDONMENT - UNION REPRESENTING TRUCK DRIVERS - WORK OF TRUCK DRIVERS CONTRACTED OUT FOR A PERIOD OF 10 YEARS AND NO MENTION OF TRUCK DRIVERS IN COLLECTIVE AGREEMENT - COMPANY REVERTING TO ITS FORMER PRACTICE AND HIRING TRUCK DRIVERS - UNION SUBMITTING CHECK-OFF CARDS FOR TRUCK DRIVERS DURING BARGAINING AND LODGING GRIEVANCE - SUBSEQUENT COLLECTIVE AGREEMENT CONTAINING NO MENTION OF TRUCK DRIVERS - WHETHER COLLECTIVE AGREEMENT COVERS TRUCK DRIVERS - WHETHER ABANDONMENT - WHETHER APPLICATION BARRED.

GENERAL TRUCK DRIVERS UNION LOCAL 938 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA v. DOMINION BRIDGE COMPANY LIMITED MOUNT DENNIS PLANT v. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 v. UNITED STEELWORKERS OF AMERICA v. DRAFTSMEN'S ASSOCIATION OF ONTARIO, LOCAL 164, AMERICAN FEDERATION OF TECHNICAL ENGINEERS, A.F.L.-C.I.O., C.L.C. 201

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OUELLETTE & ROCHEFORT LTD. v. UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 2486 218

BARGAINING UNIT - EMPLOYEES - TELEPHONE SALES GIRLS - USUAL PRACTICE TO INCLUDE SALES STAFF WITH OFFICE STAFF - PARTIES AGREEING TO INCLUDE MOST OF SALES DEPARTMENT WITH PRODUCTION AND DELIVERY EMPLOYEES - WHETHER TELEPHONE SALES GIRLS SHARE COMMUNITY OF INTEREST WITH OFFICE STAFF - WHETHER INCLUDED IN BARGAINING UNIT.

INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA, AFL-CIO, CLC v. SEVEN-UP (ONTARIO) LIMITED 187

BARGAINING UNIT - EMPLOYEES OF PARKS AND RECREATION AND COMMUNITY CENTRES COMMITTEE - EFFECT OF PUBLIC PARKS ACT AND DEPARTMENT OF MUNICIPAL AFFAIRS ACT - WHETHER SEPARATE AND APART FROM DEPARTMENTS NORMALLY FOUND WITHIN INDEPENDENT ENTITY - CONSIDERATION OF WISHES OF EMPLOYEES AS TO

APPROPRIATENESS OF BARGAINING UNIT - WHETHER INCLUDED IN ALL EMPLOYEE BARGAINING UNIT.	
CANADIAN UNION OF PUBLIC EMPLOYEES v. THE CORPORATION OF THE TOWN OF HESPELER v. LOCAL UNION 804 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS v. GROUP OF EMPLOYEES	190
BARGAINING UNIT - EMPLOYEES OF CEMETERY BOARD - EFFECT OF THE CEMETERIES ACT AND DEPARTMENT OF MUNICIPAL ACT - WHETHER INDEPENDENT ENTITY SEPARATE AND APART - WHETHER INCLUDED IN ALL EMPLOYEE BARGAINING UNIT.	
CANADIAN UNION OF PUBLIC EMPLOYEES v. THE CORPORATION OF THE TOWN OF HESPELER v. LOCAL UNION 804 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS v. GROUP OF EMPLOYEES	190
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BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R.W. TEAGLE.

APPEARANCES AT THE HEARING: JOHN P. NELLIGAN AND THOMAS L. REES FOR CANADIAN MERCHANDISING EMPLOYEES' UNION; R.C. FILION FOR GOLDSTEIN FOODMART LTD.; IAN SCOTT FOR RETAIL CLERKS UNION, LOCAL 486 CHARTERED BY THE RETAIL CLERKS INTERNATIONAL ASSOCIATION.

DECISION OF BOARD MEMBERS E. BOYER AND R.W. TEAGLE: APRIL 6, 1971.

1. THIS IS A REFERENCE FROM THE MINISTER UNDER SECTION 79A OF THE LABOUR RELATIONS ACT. THE FACTS IN THIS CASE ARE RELATIVELY SIMPLE.

2. MR. DIRENFELD ADVISED THE BOARD THAT HE WAS TAKING THE PLACE OF MR. IAN SCOTT COUNSEL FOR THE INTERVENER. THE BOARD ADVISED THE PARTIES THAT THEY WERE IMMEDIATELY GOING TO GO INTO THE QUESTION RAISED IN THE APPLICATIONS UNDER SECTION 79A. PREVIOUSLY WE HAD DEALT WITH THE MATTERS IN THE CERTIFICATION PROCEEDINGS. MR. TEAGLE NOTES THAT MR. DIRENFELD STATED: "I HAVE BEEN INSTRUCTED TO WITHDRAW AND TAKE NO FURTHER PART IN THE PROCEEDINGS". MR. BOYER'S EVIDENCE INDICATES MR. DIRENFELD STATED THAT HE WAS INSTRUCTED TO WITHDRAW AND TAKE NO FURTHER PART IN THE PROCEEDINGS WITH HIS CLIENT. MR. FILION, WHO REPRESENTED THE RESPONDENTS IN THIS QUESTION, STATED HE DID NOT AGREE WITH THE BOARD'S DECISION BUT HE WAS NOT PREPARED TO WITHDRAW.

3. MR. SCOTT ON BEHALF OF THE INTERVENER ATTEMPTED TO RE-ENTER THE PROCEEDINGS. WE DENIED THE INTERVENER THE RIGHT TO RE-ENTER AS THE WITHDRAWAL WAS UNEQUIVOCAL, WITHOUT ANY CONDITIONS ATTACHED THERE-TO. IT IS OUR OPINION THAT ONCE A PARTY OR PARTIES WITHDRAWS IN THIS

MANNER THAT THEY ARE NOT ENTITLED TO COME BACK INTO THE PROCEEDINGS AND WE CONFIRM OUR DECISION GIVEN AT THE HEARING.

DECISION OF O.B. SHIME, VICE-CHAIRMAN: APRIL 6, 1971.

1. THE MATTERS IN ISSUE ORIGINALLY AROSE IN AN APPLICATION FOR CERTIFICATION. AS A RESULT OF SUBMISSIONS THAT WERE MADE BY COUNSEL THE APPLICATIONS FOR CERTIFICATION WERE LISTED WITH THE REFERENCES FROM THE MINISTER PURSUANT TO SECTION 79A OF THE LABOUR RELATIONS ACT. ALL MATTERS ARE INTERRELATED AND THE EVENTS LEADING UP TO THE HEARING OF THESE MATTERS ARE OF INTEREST.

2. WHEN THE APPLICATION FOR CERTIFICATION FIRST CAME ON FOR HEARING COUNSEL FOR THE RETAIL CLERKS UNION, LOCAL NO. 486 CHARTERED BY THE RETAIL CLERKS INTERNATIONAL ASSOCIATION (HEREINAFTER REFERRED TO AS THE INTERVENER), SUBMITTED THAT IT HAD THE BARGAINING RIGHTS AND THAT IT WAS PRESENTLY AT CONCILIATION WITH THE RESPONDENT COMPANY. CONSEQUENTLY, IT SUBMITTED THAT THE APPLICATIONS WERE BARRED UNDER SECTION 46(2) OF THE LABOUR RELATIONS ACT WHICH PROVIDES AS FOLLOWS:

46.-(2) WHERE NOTICE HAS BEEN GIVEN UNDER SECTION 40 AND THE MINISTER HAS APPOINTED A CONCILIATION OFFICER OR A MEDIATOR, NO APPLICATION FOR CERTIFICATION OF A BARGAINING AGENT OF ANY OF THE EMPLOYEES IN THE BARGAINING UNIT AS DEFINED IN THE COLLECTIVE AGREEMENT AND NO APPLICATION FOR A DECLARATION THAT THE TRADE UNION THAT WAS A PARTY TO THE COLLECTIVE AGREEMENT NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT AS DEFINED IN THE AGREEMENT SHALL BE MADE AFTER THE DATE WHEN THE AGREEMENT CEASED TO OPERATE OR THE DATE WHEN THE MINISTER APPOINTED A CONCILIATION OFFICER OR A MEDIATOR, WHICHEVER IS LATER, UNLESS, FOLLOWING THE APPOINTMENT OF A CONCILIATION OFFICER OR A MEDIATOR, IF NO COLLECTIVE AGREEMENT HAS BEEN MADE,

(A) AT LEAST TWELVE MONTHS HAVE ELAPSED FROM THE DATE OF THE APPOINTMENT OF THE CONCILIATION OFFICER OR A MEDIATOR; OR

(B) A CONCILIATION BOARD OR A MEDIATOR HAS BEEN APPOINTED AND THIRTY DAYS HAVE ELAPSED AFTER THE REPORT OF THE CONCILIATION BOARD OR THE MEDIATOR HAS BEEN RELEASED BY THE MINI-

STER TO THE PARTIES; OR

- (c) THIRTY DAYS HAVE ELAPSED AFTER THE MINISTER HAS INFORMED THE PARTIES THAT HE DOES NOT DEEM IT DESIRABLE TO APPOINT A CONCILIATION BOARD,

WHICHEVER IS LATER.

COUNSEL FOR THE CANADIAN MERCHANDISING EMPLOYEES' UNION (HEREINAFTER REFERRED TO AS THE CMEU), SUBMITTED THAT NOTWITHSTANDING THAT A CONCILIATION OFFICER HAD BEEN APPOINTED THAT THOSE PROCEEDINGS WERE A NULLITY BECAUSE THE INTERVENER WAS NO LONGER IN EXISTENCE. COUNSEL FOR THE CMEU SUBMITTED THAT PRIOR TO A CONCILIATION OFFICER BEING APPOINTED UNDER SECTION 46(2) NOTICE MUST BE GIVEN UNDER SECTION 40 OF THE LABOUR RELATIONS ACT WHICH PROVIDES INTER ALIA:

"EITHER PARTY TO A COLLECTIVE AGREEMENT MAY, ... GIVE NOTICE IN WRITING TO THE OTHER PARTY OF ITS DESIRE TO BARGAIN ...".

THE CMEU SUBMITTED THAT SINCE THE INTERVENER HAD GONE OUT OF EXISTENCE IT WAS NOT A PARTY TO ANY COLLECTIVE AGREEMENT, AND THEREFORE A NOTICE COULD NOT BE GIVEN WHICH WOULD SATISFY THE REQUIREMENTS OF SECTION 40 OF THE LABOUR RELATIONS ACT, WHICH WAS A PREREQUISITE TO THE APPOINTMENT OF A CONCILIATION OFFICER UNDER SECTION 46(2) AND THEREFORE THE MINISTER'S APPOINTMENT WAS A NULLITY.

3. THIS APPOINTMENT OF A CONCILIATION OFFICER BY THE MINISTER POSED TWO PROBLEMS. FIRST, IF IN THE CERTIFICATION PROCEEDINGS THE BOARD SHOULD FIND THAT THE INTERVENER HAD CEASED TO EXIST AND THAT THE PREREQUISITES TO THE APPOINTMENT OF A CONCILIATION OFFICER HAD NOT BEEN COMPLIED WITH, THEN THIS BOARD WOULD IN EFFECT BE REVIEWING THE MINISTERIAL DISCRETION IN GRANTING CONCILIATION. WE WERE SOMEWHAT IN DOUBT AS TO WHETHER THE BOARD COULD REVIEW THE EXERCISE OF THE MINISTER'S DISCRETION.

4. THE SECOND PROBLEM THAT AROSE IS THAT IF WE WERE TO GRANT CERTIFICATES TO THE CMEU THEN THE RESPONDENT EMPLOYER WOULD BE PLACED IN A POSITION WHERE IT WOULD BE REQUIRED TO BARGAIN WITH BOTH THE CMEU AND THE INTERVENER AS BARGAINING AGENT FOR THE SAME GROUP OF EMPLOYEES AND THE RESPONDENT EMPLOYER WOULD NOT KNOW WHO REALLY REPRESENTED THOSE EMPLOYEES.

5. AT THE HEARING MR. NELLIGAN, COUNSEL FOR THE CMEU, GAVE AN UNDERTAKING TO MAKE A REQUEST UNDER SECTION 79A(1) OF THE LABOUR RELATIONS ACT, AND HAVE THE MINISTER REFER TO THE BOARD ANY QUESTION ARISING AS TO THE PROPRIETY OF THE APPOINTMENT OF THE CONCILIATION

OFFICER IN THIS MATTER. AS A RESULT, THE APPLICATIONS FOR CERTIFICATION WERE ADJOURNED AND SUBSEQUENTLY A REQUEST WAS MADE BY MR. NELIGAN, AND THE MINISTER HAS MADE A REFERENCE TO THE BOARD UNDER SECTION 79A(1). THESE MATTERS BEING INTERRELATED ARE NOW BEING HEARD TOGETHER IN ORDER TO ENABLE THE BOARD TO DEAL WITH ALL THE RELEVANT FACTS AND ISSUES.

6. ALL MATTERS CAME ON FOR HEARING ON FEBRUARY 10, 1971. THE BOARD THEN DEALT WITH CERTAIN PRELIMINARY MATTERS IN THE CERTIFICATION PROCEEDINGS WITHOUT PREJUDICE TO THE POSITION OF THE INTERVENER. THE CMEU WAS ALSO REQUIRED TO PROVE ITS STATUS AND THE BOARD HEARD EVIDENCE CONCERNING THAT ISSUE. AT THE CONCLUSION OF THE EVIDENCE RELATING TO STATUS, MR. SCOTT FOR THE INTERVENER, MADE CERTAIN SUBMISSIONS WITH RESPECT TO THE STATUS OF THE CMEU. WE RESERVED JUDGMENT ON THE ISSUE OF STATUS AND THEN TURNED TO THE ISSUES ARISING FROM THE APPOINTMENT OF A CONCILIATION OFFICER. PRIOR TO HEARING ANY EVIDENCE IN THAT MATTER THE INTERVENER SERVED THE BOARD WITH A NOTICE OF MOTION RETURNABLE IN THE SUPREME COURT OF ONTARIO, WHICH PURPORTED TO PROHIBIT THE BOARD FROM PROCEEDING FURTHER WITH THE APPLICATION FOR CERTIFICATION AND COUNSEL UNDERTOOK TO SERVE THE BOARD WITH A NOTICE OF MOTION WHICH WOULD PREVENT THE BOARD FROM PROCEEDING WITH THE MATTERS REFERRED UNDER SECTION 79A(1) OF THE LABOUR RELATIONS ACT. AFTER CONSIDERING THE NOTICE OF MOTION AND IN THE LIGHT OF THE DECISION OF THE ONTARIO COURT OF APPEAL IN REGINA EX REL. AMALGAMATED MEATCUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, LOCAL 633 V. KITCHENER FOOD MARKET LIMITED ET AL 64 CLLC 495 THE BOARD THEN DETERMINED THAT IT WOULD PROCEED TO HEAR EVIDENCE WITH RESPECT TO THE ISSUES CONTAINED IN THE REFERENCES UNDER SECTION 79A(1).

7. UPON BEING ADVISED THAT THE BOARD WAS GOING TO PROCEED MR. DIRENFELD, WHO SUBSTITUTED FOR MR. SCOTT COUNSEL FOR THE INTERVENER, ADVISED THE BOARD THAT HE WAS WITHDRAWING FROM THE PROCEEDINGS WITH HIS CLIENT. WE THEN PROCEEDED TO HEAR EVIDENCE WITH RESPECT TO THE REFERENCES UNDER SECTION 79A(1). AS THE EVIDENCE WAS NOT CONCLUDED ON THAT DAY THE MATTERS WERE ADJOURNED TO A DATE TO BE FIXED BY THE REGISTRAR, AND THE REGISTRAR THEN FIXED MARCH 16 AND 17 FOR THE CONTINUATION OF BOTH MATTERS AT OTTAWA. PRIOR TO THOSE DATES THE BOARD WAS ADVISED BY THE INTERVENER THAT IT WAS ABANDONING THE NOTICE OF MOTION WHICH HAD BEEN SERVED, AND THE INTERVENER THEN APPEARED AT THE PROCEEDINGS IN OTTAWA AND ADVISED THE BOARD THAT IT WISHED TO PARTICIPATE IN THOSE PROCEEDINGS. THE RIGHT OF THE INTERVENER TO PARTICIPATE IN THE CONTINUATION OF THE PROCEEDINGS IS THE MATTER NOW AT ISSUE. A MAJORITY OF THE BOARD RULED THAT BECAUSE OF THE EARLIER WITHDRAWAL THE INTERVENER WAS NOT ENTITLED TO PARTICIPATE IN THE CONTINUATION OF THE PROCEEDINGS, AND I INDICATED MY DISSENT FROM THE MAJORITY OPINION AND RULED THAT THE INTERVENER WAS ENTITLED TO PARTICIPATE. THE INTERVENER THEN SERVED A FURTHER NOTICE OF MOTION PROHIBI-

TING THE BOARD FROM PROCEEDING AND THE HEARING WAS THEN ADJOURNED TO ENABLE THE ISSUES IN DISPUTE TO BE DEALT WITH BY THE SUPREME COURT OF ONTARIO.

8. AT THAT TIME WE INDICATED TO THE PARTIES THAT WE WOULD GIVE REASONS FOR OUR DECISION. THERE ARE A NUMBER OF REASONS WHY I RESPECTFULLY DISAGREE WITH MY COLLEAGUES ON THE BOARD.

9. FIRST I AM OF THE OPINION THAT IT IS UNCLEAR AS TO HOW THE BOARD SHOULD CONDUCT ITSELF WHEN SERVED WITH A NOTICE OF ONE OF THE PREROGATIVE WRITS. THERE APPEARS TWO VIEWS AS TO HOW THE BOARD SHOULD CONDUCT ITSELF WHICH ARE EXPRESSED IN THE FOLLOWING CASES.

10. IN THE ARMSTRONG TRANSPORT AND INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 938, 64 CLLC, 804, HAINES J. SAID:

...
COUNSEL FOR ARMSTRONG TRANSPORT SUBMITTED THAT UPON RAISING THE ISSUE OF JURISDICTION THE LABOUR RELATIONS BOARD OUGHT THEN AND THERE TO HAVE POSTPONED THE HEARING UNTIL THEIR CLIENT HAD OBTAINED A DECISION OF THE SUPREME COURT OF ONTARIO AS TO WHETHER THE BOARD HAD JURISDICTION. THEY RELIED ON REGINA V. ONTARIO LABOUR RELATIONS BOARD, EX PARTE ONTARIO FOOD TERMINAL BUILDING (1963) 38 D.L.R. 2ND, 530. INSTEAD THE BOARD HELD THAT IT HAD JURISDICTION AND HAS INDICATED ITS INTENTION TO PROCEED WITH THE APPLICATION FOR CERTIFICATION. WITHOUT WAITING FOR THE CONCLUSION OF THE PROCEEDINGS ARMSTRONG TRANSPORT NOW APPLIES FOR CERTIOARI AND PROHIBITION. AND THE MATTER BEFORE ME WAS ARGUED ON THE NARROW GROUND AS TO WHETHER THE BOARD WAS RIGHT IN ENTERTAINING AND DEALING WITH THE OBJECTION TO ITS JURISDICTION. NO OTHER ISSUE WAS ARGUED.

WHILE THERE IS MUCH TO BE SAID IN THE ONTARIO FOOD TERMINAL'S CASE FOR THE POSITION OF THE APPLICANT, WITH RESPECT I AM OF THE OPINION THAT IT IS OBITER AND INCONSISTENT WITH OTHER DECISIONS. THESE WILL BE FOUND COLLECTED IN A RECENT JUDGMENT OF THE CHIEF JUSTICE OF THE HIGH COURT IN UNITED STEEL WORKERS OF AMERICA V. INTERNATIONAL NICKEL COMPANY DATED THE 4TH OF NOVEMBER 1963, (NOW REPORTED 64 CLLC 806; (1964) 41 D.L.R. 456; (1964) 1 O.R. 173) AND IN AN INTERESTING COMMENTARY TO BE FOUND IN 1963 CANADIAN BAR REVIEW 446 BY PROFESSOR BORA LASKIN.

IN MY VIEW, THE ONTARIO LABOUR RELATIONS BOARD HAD THE RIGHT AND DUTY TO ENTERTAIN AND DEAL WITH AN OBJECTION TO ITS JURISDICTION WHEN IT WAS RAISED. HAVING DECIDED IT HAD JURISDICTION, IT SHOULD THEN PROCEED WITH THE APPLICATION BEFORE IT. WHEN THE APPLICATION HAS BEEN DEALT WITH, ANY PARTY THINKING HIMSELF AGGRIEVED BY THE RULING AS TO JURISDICTION CAN THEN APPLY TO THIS COURT BY WAY OF CERTIORARI AND FOR SUCH RELIEF AS MAY SEEM APPROPRIATE. TO DO OTHERWISE WOULD SERIOUSLY HAMPER THE OPERATIONS OF THE BOARD AND DEFEAT THE PURPOSES OF THE STATUTE, ONE OF WHICH IS THE EXPEDITIOUS SETTLEMENT OF LABOUR MATTERS. FURTHERMORE, IF THE BOARD HAD TO RETIRE UPON THE FILING OF AN OBJECTION TO JURISDICTION, THE UNION WOULD HAVE TO TAKE ON THE BURDEN OF CONTESTING THE EMPLOYER'S APPLICATION TO THE COURT. THEN IF THE COURT HELD THE LABOUR RELATIONS BOARD HAD JURISDICTION THE UNION WOULD HAVE TO RETURN TO THE BOARD FOR THE PURPOSE OF CERTIFICATION. ONE ASKS, "WHAT WOULD HAPPEN IF THE UNION WAS NOT CERTIFIED?" IT WOULD HAVE INVOLVED ITSELF IN CONSIDERABLE EXPENSE AND DELAY TO NO AVAIL. I DO NOT THINK SUCH AN INTERPRETATION IS WITHIN THE SPIRIT AND OBJECT OF THE STATUTE. TO PERMIT THE INTERRUPTION OF A HEARING WHILE ONE PARTY EXERCISES HIS RIGHT TO HAVE THE COURT PASS ON A COLLATERAL MATTER TENDS TO DEFEAT THE PURPOSE OF THE LEGISLATION.

SEE ALSO R. V. TOTTENHAM AND DISTRICT RENT TRIBUNAL, (1957) 1 Q.B. 103 AT P. 107 APPV. KENNETH S. BELL V. ONTARIO HUMAN RIGHTS COMMISSION AND CARL MCKAY (S.C.C. UNREPORTED PER MARTLAND J. FEBRUARY 1, 1971.).

11. IN THE CEDARVALE TREE SERVICES LTD. V. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 70 CLC 14,045, (1971) 1 O.R. 383, WRIGHT J. SAID:

THE BOARD IS SUPREME IN ITS FIELD AND IS FREE TO EXERCISE ITS SUPREMACY ON WHATEVER EVIDENCE IT CHOOSES (s. 77(2)(c)) AND, SUBJECT TO A FULL RIGHT OF AUDIENCE, IN WHATEVER WAY IT CHOOSES. BUT ITS FIELD AND THE SCOPE OF

ITS JURISDICTION ARE STILL MATTERS IN THE KEEPING OF THE SUPREME COURT OF ONTARIO. THE BOARD MAY AND, INDEED, SHOULD MAKE ITS DECISIONS IN ITS OWN WAY ON THE RANGE OF ITS JURISDICTION, BUT DESPITE THE BRAVE WORDS OF SS. 79(1) AND 80 IT IS FOR THIS COURT WHEN THE QUESTION IS RAISED TO RULE ON WHETHER THE BOARD HAS JURISDICTION.

...

THE BOARD SHOULD FIRST ASSUME JURISDICTION UNLESS IT IS PATENTLY NOT GIVEN IT IN THE LABOUR RELATIONS ACT. IF A QUESTION OF ITS JURISDICTION IS RAISED, IT SHOULD TAKE THE EVIDENCE AND HEAR THE ARGUMENTS OF ALL PARTIES AND SHOULD COME PROMPTLY TO A DECISION. IT SHOULD NOT NORMALLY HEAR INADMISSIBLE EVIDENCE ON SUCH AN ISSUE, ALTHOUGH IT MAY HEAR SUCH EVIDENCE IF IT WISHES TO DO SO. IT SHOULD THEN DECIDE THE QUESTION RAISED AND NEED NOT DELIVER A FORMAL JUDGMENT OR GIVE ELABORATE REASONS. IT SHOULD, HOWEVER, MAKE ITS POSITION CLEAR. IF IT DECIDES THAT IT HAS JURISDICTION, IT SHOULD OFFER THE PARTIES THE TIME AND OPPORTUNITY TO BRING THE QUESTION BEFORE THIS COURT. IF NO ONE WISHES TO TAKE THIS OPPORTUNITY, THE BOARD SHOULD PROCEED ON ITS BUSINESS IN ITS REGULAR WAY. IF A PARTY ACCEPTS THE BOARD'S OFFER AND WISHES TO MOVE IN THIS COURT, PROCEEDINGS BEFORE THE BOARD SHOULD BE ADJOURNED TO ENABLE IT TO DO SO, AND SHOULD ONLY RESUME IF AND WHEN IT IS FINALLY DECIDED THAT THE BOARD HAS JURISDICTION.

SEE ALSO REGINA V. ONTARIO LABOUR RELATIONS BOARD, EX PARTE ONTARIO FOOD TERMINAL BUILDING, SUPRA.

12. FACED WITH THESE DECISIONS THE BOARD IS UNCLEAR AS TO HOW IT SHOULD PROCEED, AND NO DOUBT COUNSEL APPEARING BEFORE THIS BOARD ARE UNCERTAIN AS WELL. IF A PARTY REMAINS IN THE PROCEEDINGS IS IT TAKEN TO HAVE WAIVED ITS RIGHTS? IT IS CLEAR THAT THE COURT WILL "LOOK INTO THE CONDUCT OF THE PARTIES IN DETERMINING WHETHER OR NOT PROHIBITION SHOULD LIE". RE COLONIAL COACH LINES LTD. ET AL. AND ONTARIO HIGHWAY TRANSPORT BOARD ET AL. (1967) 2 O.R. 243. IF A PARTY WITHDRAWS FROM THE PROCEEDINGS SO AS TO PROTECT ITS RIGHTS THEN I THINK IN VIEW OF THE UNCERTAINTY OF THE PROCEDURE THAT THE BOARD SHOULD NOT BE TOO ZEALOUS IN REFUSING A PARTY READMISSION TO THE PROCEEDINGS. ACCORDINGLY, WHERE A PARTY WITHDRAWS FROM A PRO-

CEEDING IN THE SHADOW OF A NOTICE OF MOTION RETURNABLE IN THE SUPREME COURT OF ONTARIO QUESTIONING A DECISION OF THE BOARD, THEN I AM PREPARED TO GRANT TO SUCH A PARTY THE BENEFIT ARISING FROM ANY DOUBT AS TO HOW TO PROTECT ITS RIGHTS.

13. MY SECOND REASON FOR PERMITTING THE INTERVENER RE-ENTRY TO THESE MATTERS IS THAT NONE OF THE OTHER PARTIES INDICATED THEY WERE PREJUDICED. I DO NOT FOR A MOMENT SUGGEST THAT THE BOARD ROLL BACK THE PROCEEDINGS IN ORDER TO ALLOW A DEPARTED PARTY THE RIGHT TO COME BACK FOR A SECOND SHOWING, BUT WHERE THERE IS NO PREJUDICE, TO ALLOW THE INTERVENER READMISSION TO THE PROCEEDINGS AT THE STAGE THAT THE PROCEEDINGS ARE NOW AT, WOULD NOT HAVE HARMED EITHER OF THE PARTIES OR THE PROCEDURE BEFORE THIS BOARD. IT IS NOT USUAL THAT AN INCIDENT OF THIS TYPE OCCUR, AND I AM NOT CONVINCED BY THE ARGUMENT WHICH SUGGEST THAT PROHIBITING THE INTERVENER RE-ENTRY TO THE PROCEEDINGS IS NECESSARY TO THE ORDERLY CONDUCT OF THE BOARD. OF COURSE, IF WHAT OCCURRED HERE WAS BECOMING A COMMON PRACTICE AND PARTIES WERE ABUSING THE ORDERLY PROCEDURES OF THIS BOARD, I WOULD HAVE NO HESITATION IN ATTEMPTING TO PREVENT RESORT TO THAT TYPE OF PRACTICE, AND IF I THOUGHT THAT THE INTERVENER WAS ATTEMPTING TO ABUSE THE ORDERLY CONDUCT OF THE BOARD IN THIS MATTER, I WOULD HAVE JOINED WITH MY COLLEAGUES AND PREVENTED THE INTERVENER FROM RE-ENTERING THE PROCEEDINGS. ACCORDINGLY, SINCE NO PREJUDICE WAS SUFFERED BY ANY OF THE PARTIES, AND SINCE THE PARTIES TO THE PROCEEDINGS DO NOT OBJECT TO THE INTERVENER RE-ENTERING THE PROCEEDINGS I AM OF THE OPINION THAT THIS BOARD SHOULD NOT ON ITS OWN MOTION PREVENT THE INTERVENER FROM RE-ENTERING THE PROCEEDINGS.

14. THE THIRD REASON FOR PERMITTING THE INTERVENER RE-ENTRY IS BECAUSE THIS IS A SITUATION WHERE THE BOARD IS REQUIRED TO REPORT TO THE MINISTER - THIS IS NOT A MATTER WHERE THE BOARD BEARS THE RESPONSIBILITY OF MAKING A FINAL DECISION. THE MINISTER IS SEEKING ADVICE, AND THE BEST ADVICE IN MY VIEW IS THE ADVICE GIVEN AFTER HEARING AS MANY OF THE RELEVANT FACTS AS POSSIBLE. IF THERE ARE FACTS WHICH THE INTERVENER WILL ADDUCE, THEN I THINK THE MERITS OF BEING ABLE TO PROVIDE A MORE SATISFACTORY REPORT TO THE MINISTER OUTWEIGH ANY DISADVANTAGES IN PERMITTING THE INTERVENER RE-ENTRY TO THE PROCEEDINGS.

15. LAST BUT NOT LEAST, I AM CONCERNED ABOUT THE MATTER OF NATURAL JUSTICE IN THESE PROCEEDINGS. WHILE IT IS TRUE WITH REFERENCE UNDER SECTION 79A(1) THAT THE MINISTER IS NOT BOUND BY ANY DECISION OF THIS BOARD, THE PROCEDURES WHICH ARE PRELIMINARY TO THE REPORT TO THE MINISTER ARE OF A QUASI JUDICIAL NATURE AND I AM OF THE OPINION THAT ALL THE RIGHTS OF NATURAL JUSTICE INCLUDING THE RIGHT TO CROSS-EXAMINE AND THE RIGHT TO ADDUCE RELEVANT EVIDENCE SHOULD BE OF PARAMOUNT CONCERN. NO REASON HAS BEEN DEMONSTRATED FOR DISALLOWING THE INTERVENER THESE RIGHTS OF NATURAL JUSTICE AND IT IS NO ANSWER TO THE ISSUE POSED TO SAY THAT THE INTERVENER HAS HAD THE OPPORTUNITY BUT

HAS CHOSEN TO WITHDRAW. IT SEEKS TO CONTINUE THIS OPPORTUNITY AND THERE IS NO REASON THAT HAS BEEN ESTABLISHED TO MY SATISFACTION TO DENY THE INTERVENER THE CONTINUATION OF THE OPPORTUNITY TO CROSS-EXAMINE, ADDUCE EVIDENCE OR OTHERWISE PARTICIPATE IN THE PROCEEDINGS. SEE E.G. RE OTJES AND GEN. SUPPLIES LTD. (1964), 49 W.W.R. 488 (ALTA.).

16. FOR ALL THESE REASONS I WOULD HAVE ALLOWED THE INTERVENER THE RIGHT TO RE-ENTER THE PROCEEDINGS.

18757-70-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. BASIL (SIMCOE) LIMITED (RESPONDENT) V. CENTRAL ONTARIO DISTRICT COUNCIL, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (INTERVENER).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: EDWARD VANDERKLOET FOR THE APPLICANT; MICHAEL GORDON FOR THE RESPONDENT; W. V. SASSO AND G. BERRIAULT FOR THE INTERVENER.

DECISION OF VICE-CHAIRMAN R. A. FURNESS AND BOARD MEMBER R. W. TEAGLE: APRIL 15, 1971.

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4. THIS APPLICATION FOR CERTIFICATION WAS FILED ON DECEMBER 4, 1970. THE RESPONDENT AND THE INTERVENER ARE PARTIES TO A COLLECTIVE AGREEMENT MADE ON APRIL 25, 1968 AND EFFECTIVE UNTIL APRIL 30, 1969 WHICH COVERED THE EMPLOYEES AFFECTED BY THIS APPLICATION. THIS COLLECTIVE AGREEMENT WAS BY ITS TERMS TO REMAIN IN EFFECT FROM YEAR TO YEAR SUBJECT TO NOTICE TO BE GIVEN IN WRITING BY EITHER PARTY THERE-TO OF ITS INTENT TO TERMINATE OR AMEND IT NOT EARLIER THAN NINETY DAYS AND AT LEAST THIRTY DAYS BEFORE ITS EXPIRY DATE. TIMELY NOTICE OF THE INTERVENER'S DESIRE TO RENEW THIS COLLECTIVE AGREEMENT WAS SERVED ON THE RESPONDENT. NEGOTIATIONS ENSUED BETWEEN THE PARTIES AND ON NOVEMBER 17, 1969, THE DEPUTY MINISTER OF LABOUR ADVISED THE PARTIES THAT HE HAD DECIDED NOT TO APPOINT A BOARD OF CONCILIATION. HAVING REGARD TO THE PROVISIONS OF SECTIONS 5(2) AND 46(2) OF THE LABOUR RELATIONS ACT, THE BOARD FINDS THAT THIS APPLICATION FOR CERTIFICATION IS TIMELY.

5. THE BOARD FURTHER FINDS IN THE CIRCUMSTANCES OF THIS APPLICATION THAT ALL CARPENTERS, WORKING FOREMEN AND CARPENTER APPRENTICES IN THE COUNTY OF SIMCOE, THE DISTRICT OF MUSKOKA, THE TOWNSHIP OF RAMA, MARA, AND THORAH IN THE COUNTY OF ONTARIO, INCLUDING ALL THE MUNICIPALITIES CONTAINED THEREIN, SAVE AND EXCEPT FOR NON-WORKING CARPENTER FOREMEN AND PERSONS ABOVE THAT RANK, CONSTITUTE A UNIT OF

EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

6. THE BOARD HAS CONSIDERED THE CONTENTS OF THE REPORT OF THE EXAMINER, TOGETHER WITH THE ORAL AND WRITTEN REPRESENTATIONS OF THE PARTIES WITH RESPECT TO THE DUTIES AND RESPONSIBILITIES OF LEONARD QUINN AND HENRY HANGAARD.

7. LEONARD QUINN WAS HIRED BY THE RESPONDENT AS A WORKING FOREMAN IN JUNE 1970 AND AT THE TIME THIS APPLICATION WAS MADE HE WAS STILL IN THE EMPLOY OF THE RESPONDENT IN THIS CAPACITY. QUINN HAS NO AUTHORITY TO HIRE, DISMISS OR LAY OFF EMPLOYEES OF THE RESPONDENT ON HIS OWN INITIATIVE. IN THIS REGARD, QUINN IS MERELY A CONDUIT FOR CARRYING OUT THE DECISIONS OF BASIL HOGENDOORNE, THE PRESIDENT OF THE RESPONDENT, WHILE QUINN EXERCISES A DEGREE OF DIRECTION ON THE JOB, HE SPENDS THE MAJORITY OF HIS TIME WORKING WITH THE OTHER EMPLOYEES OF THE RESPONDENT. QUINN DOES NOT SIGN TIME SHEETS FOR THE OTHER EMPLOYEES AND IT IS NECESSARY FOR HIM TO CHECK WITH HOGENDOORNE WHEN AN EMPLOYEE DESIRES TO ABSENT HIMSELF FROM WORK FOR FIFTEEN MINUTES. IN CONSIDERING THE DUTIES OF QUINN AS A WHOLE, WE FIND THAT HE EXERCISES NO MORE SUPERVISORY POWER THAN THAT NORMALLY POSSESSED BY A NON-WORKING FOREMAN IN THE CONSTRUCTION INDUSTRY. WE FIND THAT QUINN NEITHER EXERCISES MANAGERIAL FUNCTIONS NOR IS EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT.

8. HENRY HANGAARD WAS HIRED BY THE RESPONDENT AS A CARPENTER AND AS A WORKING FOREMAN AND HAS BEEN EMPLOYED IN THIS CAPACITY FOR APPROXIMATELY TWO AND A HALF YEARS. HANGAARD HAS NO AUTHORITY TO HIRE, DISMISS OR SUSPEND EMPLOYEES. IN THE EVENT THAT THESE STEPS ARE NECESSARY, IT IS HOGENDOORNE WHO MAKES THE DECISION WITH HANGAARD MERELY ACTING UNDER HIS CLOSE SUPERVISION. HANGAARD HAS NO POWER TO AUTHORIZE OVERTIME, DOES NOT SIGN TIME SHEETS FOR THE OTHER EMPLOYEES, HAS NO POWER TO RECOMMEND WAGE INCREASES AND DOES NOT HAVE ACCESS TO CONFIDENTIAL INFORMATION IN RELATION TO LABOUR RELATIONS. WHILE HANGAARD WORKS WITH THE TOOLS AND DIRECTS EMPLOYEES, HE WAS UNABLE EVEN TO ESTIMATE THE PROPORTION OF HIS TIME SO SPENT.

9. ON THE OTHER HAND, HANGAARD DOES HAVE THE AUTHORITY TO GRANT CASUAL TIME OFF AND STATES THAT HE SUPERVISES THE TRADESMEN OF ANOTHER EMPLOYER IF THEY WORK ON THE SAME JOB ON WHICH HE IS WORKING. A CLOSER EXAMINATION OF THE EVIDENCE, HOWEVER, REVEALS THAT IN FACT HANGAARD DID NOT SUPERVISE THE TRADESMEN OF OTHER EMPLOYERS BECAUSE THESE TRADESMEN HAD THEIR OWN FOREMAN PRESENT. HANGAARD APPEARED TO HAVE NO AUTHORITY OVER THE TRADESMEN OF OTHER EMPLOYERS, SINCE IF ANY PROBLEM AROSE IN CONNECTION WITH THE WORK HE WOULD SPEAK TO THEIR FOREMEN.

10. THERE REMAINS FOR CONSIDERATION THE INCIDENT IN CONNECTION

WITH A DRUNKEN EMPLOYEE OF THE RESPONDENT. THIS INCIDENT OCCURRED SOME SIX MONTHS PRIOR TO THE MAKING OF THIS APPLICATION. THE EVIDENCE ON THIS INCIDENT IS FAR FROM CLEAR. HOWEVER, IT APPEARS THAT AN EMPLOYEE HAD BEEN "DRINKING ON THE JOB" AND HAD LEFT THE JOB IN THE AFTERNOON OF THE DAY IN QUESTION. HANGAARD HAD BEEN AWARE OF THIS STATE OF AFFAIRS BUT DID NOTHING ON THE DAY IN QUESTION. THE NEXT DAY WHEN THE EMPLOYEE CAME TO WORK, HANGAARD TOLD HIM THAT IT WAS "NO GOOD TO HAVE A MAN ON THE JOB DRINKING" AND SENT HIM HOME. HANGAARD INFORMED HOGENDOORNE OF WHAT HAD TRANSPIRED AND THE LATTER AGREED WITH WHAT HAD BEEN DONE. IT APPEARS THAT THIS WAS AN ISOLATED INCIDENT AND THAT HANGAARD SOUGHT TO HAVE HOGENDOORNE APPROVE OF HIS ACTION WITH RESPECT TO THE DRUNKEN EMPLOYEE. VIEWING THE EVIDENCE SURROUNDING THE INCIDENT OF THE DRUNKEN EMPLOYEE, IT APPEARS TO US THAT HANGAARD DID NOT DISMISS HIM BUT RATHER, IN THE ABSENCE OF HOGENDOORNE, SUSPENDED HIM. HANGAARD GAVE EVIDENCE THAT HE HAD NO AUTHORITY TO DISMISS OR SUSPEND EMPLOYEES AND THAT THE EMPLOYEES HAD NEVER BEEN TOLD THAT HE HAD SUCH AUTHORITY.

11. WE NOTE THAT HANGAARD DID NOTHING TO REPRIMAND, DISCIPLINE OR SUSPEND THE DRUNKEN EMPLOYEE AT THE TIME OF HIS "DRINKING ON THE JOB", BUT RATHER WAITED UNTIL THE NEXT DAY BEFORE TAKING ANY ACTION. WE THINK IT SIGNIFICANT THAT HE AVOIDED FACING UP TO THIS PROBLEM INITIALLY AND THAT HE SUSPENDED THE DRUNKEN EMPLOYEE WHEN Faced WITH HIM AT A TIME WHEN HOGENDOORNE WAS NOT AVAILABLE TO GIVE HIM INSTRUCTIONS. IN THESE CIRCUMSTANCES, IT APPEARS TO US THAT HANGAARD, ON THIS ONE ISOLATED OCCASION, EXCEEDED HIS AUTHORITY IN SUSPENDING THE DRUNKEN EMPLOYEE AND THAT HE SOUGHT THE APPROVAL OF HOGENDOORNE WITH RESPECT TO THE ACTION THAT HE HAD TAKEN. HAVING REGARD TO ALL OF THE EVIDENCE CONCERNING THE DUTIES AND RESPONSIBILITIES OF HANGAARD, WE FIND THAT HE NEITHER EXERCISES MANAGERIAL FUNCTIONS NOR IS EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(b) OF THE LABOUR RELATIONS ACT.

12. THE INTERVENER MADE CERTAIN ALLEGATIONS THAT QUINN AND HANGAARD, AS MEMBERS OF THE RESPONDENT'S MANAGEMENT, PARTICIPATED IN THE ORGANIZATION CAMPAIGN LEADING TO THIS APPLICATION. IT WAS THE INTERVENER'S CONTENTION THAT THE APPLICANT WAS NOT ENTITLED TO CERTIFICATION HAVING REGARD TO THE PROVISIONS OF SECTION 10 OF THE LABOUR RELATIONS ACT. HAVING REGARD TO OUR DECISION THAT QUINN AND HANGAARD DO NOT EXERCISE MANAGERIAL FUNCTIONS AND ARE NOT EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS, THE INTERVENER HAS FAILED TO ALLEGE ANY CONDUCT WHICH WOULD ON ITS FACE BRING THE APPLICANT WITHIN THE PROVISIONS OF SECTION 10 OF THE LABOUR RELATIONS ACT. SIMILARLY, THE INTERVENER HAS ALSO FAILED TO ALLEGE ANY CONDUCT WHICH WOULD INDICATE THAT THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT DOES NOT REPRESENT THE VOLUNTARY WISHES OF THE EMPLOYEES ON WHOSE BEHALF IT WAS SUBMITTED. ACCORDINGLY, THE ALLEGATIONS OF IMPROPER OR IRREGULAR CONDUCT MADE BY THE INTERVENER AGAINST THE APPLICANT AND THE RESPON-

DENT ARE HEREBY DISMISSED. REFERENCE IS MADE TO SECTION 46(1) OF THE BOARD'S RULES OF PROCEDURE.

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DECISION OF BOARD MEMBER E. BOYER: APRIL 15, 1971.

I DISSENT FROM THE MAJORITY DECISION INsofar AS IT RELATES TO HENRY HANGAARD. I WOULD HAVE FOUND THAT HENRY HANGAARD EXERCISES MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND WOULD HAVE PROCEEDED TO HEAR THE ALLEGATIONS OF IMPROPER OR IRREGULAR CONDUCT FILED BY THE INTERVENER AGAINST THE RESPONDENT AND THE APPLICANT.

18798-70-R: INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA, AFL-CIO-CLC (APPLICANT) V. SEVEN-UP (ONTARIO) LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND P. J. O'KEEFE.

DECISION OF J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBER J. D. BELL:
APRIL 13, 1971.

1. THIS IS AN APPLICATION FOR CERTIFICATION IN WHICH THE APPLICANT REQUESTED THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN. BY ITS DECISION DATED JANUARY 6, 1971, THE BOARD DIRECTED THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN IN THIS MATTER AND FURTHER DIRECTED THAT THE BALLOT BOX BE SEALED.

2. THE BOARD ALSO APPOINTED AN EXAMINER TO INQUIRE INTO THE DUTIES AND RESPONSIBILITIES OF CERTAIN PERSONS WHO WERE IN DISPUTE.

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4. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

5. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, ROUTE SUPERVISORS, PERSONS ABOVE THE RANKS OF FOREMAN AND ROUTE SUPERVISOR, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

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7. HAVING REGARD TO THE EVIDENCE CONTAINED IN THE EXAMINER'S REPORT DATED FEBRUARY 3, 1971 AND THE WRITTEN REPRESENTATIONS OF THE PARTIES WITH RESPECT THERETO, THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT

W. WATERBURY	-	CLASSIFIED AS SPECIAL EVENTS
H. ROWE	-	CLASSIFIED AS ADVANCE SALESMAN
F. WORRALL	-	CLASSIFIED AS DISPATCHER
G. HARRISON	-	CLASSIFIED AS STOCK CONTROLLER
C. WEBBER	-	CLASSIFIED AS LEAD HAND
G. S. WHITE	-	CLASSIFIED AS MAINTENANCEMAN
S. G. STAVRO	-	CLASSIFIED AS SALESMAN IN THE COLD DRINK DEPARTMENT
A. ELIA	-	CLASSIFIED AS SALESMAN IN THE COLD DRINK DEPARTMENT

ARE EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.

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9. HAVING REGARD TO THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER, THE BOARD FINDS THAT C. HICKEN, A PERSON CLASSIFIED AS A SPECIAL REPRESENTATIVE, DOES NOT EXERCISE MANAGERIAL FUNCTIONS AND IS NOT EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS. HIS DUTIES REQUIRED HIM TO LOOK AFTER PRODUCT COMPLAINTS RECEIVED THROUGH TELEPHONE CALLS AND LETTERS AND TO PERFORM OTHER PUBLIC RELATIONS WORK. HE IS SUPERVISED BY THE SALES MANAGER. HE MAINTAINS HIS FILES IN THE SAME ROOM OCCUPIED BY THE TELEPHONE SALES GIRLS. HE HAS NO CONTACT WITH THE OFFICE PERSONNEL. WE ACCORDINGLY FIND THAT C. HICKEN IS PART OF THE SALES DEPARTMENT AND IS AN EMPLOYEE OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.

10. THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER CONCERNING THE DUTIES AND RESPONSIBILITIES OF THE TELEPHONE SALES GIRLS ESTABLISHED THAT THEY WORK IN THE SALES DEPARTMENT UNDER THE AUTHORITY OF THE SALES MANAGER. THE PLACE WHERE THEY WORK IS SOME DISTANCE AWAY FROM THE GENERAL OFFICE AREA. OTHER THAN TO PICK-UP SUPPLIES FROM THE STOREROOM, THEY HAVE NO CONTACT WITH THE GENERAL OFFICE STAFF. THE TELEPHONE SALES GIRLS CONTACT CUSTOMERS BY TELEPHONE ONCE A WEEK AND OBTAIN THEIR WEEKLY ORDER. THEY THEN COMPLETE AN ORDER FORM AND INITIAL IT. AT THE END OF THE DAY THEY TALLY UP THE ORDER FORMS AND HAND THEM IN. ANY COMPLAINTS RECEIVED BY THE GIRLS FROM CUSTOMERS THAT THEY CANNOT PERSONALLY RESOLVE ARE DISCUSSED WITH THE SALES MANAGER. THE TELEPHONE SALES GIRLS RECEIVE A COMMISSION IN ADDITION TO THEIR SALARY AND THE COMMISSION AMOUNTS TO ABOUT 10 PER CENT OF THEIR TOTAL EARNINGS. THE TELEPHONE SALES GIRLS PARTICIPATE IN THE SAME SALES PROMOTIONS AS THE ADVANCE SALESMEN AND THE DELIVERYMEN.

11. THE PARTIES AGREED THAT THE BARGAINING UNIT DESCRIBED ABOVE INCLUDES THE CLASSIFICATION OF ADVANCE SALESMAN. MOST OF THE FUNCTIONS OF ADVANCE SALESMAN HAD PREVIOUSLY BEEN PERFORMED BY DELIVERY SALESMEN WHO WERE REQUIRED TO TAKE ORDERS FOR AND EFFECT DELIVERY OF THE COMPANY PRODUCTS. SHORTLY BEFORE THIS APPLICATION WAS MADE, THE SALES ASPECT OF THE DELIVERYMAN'S JOB WAS REMOVED AND GIVEN TO A NEW CLASSIFICATION CALLED ADVANCE SALESMAN IN AN ATTEMPT TO MORE EFFECTIVELY SELL AND MERCHANDISE THE COMPANY'S PRODUCTS. THE ADVANCE SALESMEN CALLED ON THE LARGER ACCOUNTS EACH WORK. HOWEVER, MANY OF THE RESPONDENT'S CUSTOMERS SOLD RELATIVELY SMALL AMOUNTS OF THE COMPANY'S PRODUCTS. THESE LOW VOLUME CUSTOMERS ARE CONTACTED BY TELEPHONE SALES GIRLS. THE TELEPHONE SALES GIRLS ARE REQUIRED TO ATTEMPT TO PROMOTE AND OBTAIN ORDERS FOR THE RESPONDENT'S PRODUCTS. THE TELEPHONE SALES GIRLS ARE PART OF THE SALES DEPARTMENT AND COME UNDER THE JURISDICTION OF THE SALES MANAGER AS DO THE ADVANCE SALESMEN AND THE OTHER SALESMEN, ALL OF WHOM THE PARTIES AGREE ARE INCLUDED IN THE BARGAINING UNIT.
12. WHILE THE BOARD RECOGNIZE THAT IT IS THE USUAL PRACTICE TO INCLUDE SALES STAFF WITH OFFICE STAFF, THE PARTIES IN THIS CASE HAVE AGREED TO INCLUDE MOST OF THE SALES DEPARTMENT WITH THE PRODUCTION AND DELIVERY EMPLOYEES FOR THE PURPOSES OF COLLECTIVE BARGAINING. THE EVIDENCE CLEARLY ESTABLISHES THAT THE TELEPHONE SALES GIRLS ARE PART OF THE SALES DEPARTMENT AND THEY SHARE A GREATER COMMUNITY OF INTEREST WITH THAT DEPARTMENT THAN WITH THE OFFICE STAFF WITH WHOM THEY HAVE VIRTUALLY NO CONTACT. SINCE THE PARTIES HAVE AGREED TO INCLUDE THE MAJORITY OF THE SALES DEPARTMENT IN THE BARGAINING UNIT, THE BOARD ACCORDINGLY FINDS THAT ALL THE EMPLOYEES IN THE SALES DEPARTMENT SHOULD ALSO BE INCLUDED IN THE BARGAINING UNIT.
13. THE BOARD THEREFORE REVOKES PARAGRAPH 4 OF ITS DECISION DATED JANUARY 6, 1971 IN THIS MATTER.
14. ON THE BASIS OF ALL THE EVIDENCE AND HAVING REGARD FOR THE AGREEMENT OF THE PARTIES WITH RESPECT TO THE OTHER SALES DEPARTMENT PERSONNEL, THE BOARD THEREFORE FINDS THAT JUDY MCEACHERN, M. FULTON, C. SOHUYKO, K. CIACCI AND S. RUTTY, PERSONS CLASSIFIED AS TELEPHONE SALES GIRLS, ARE EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.
15. THE BOARD THEREFORE FINDS THAT ON THE DATE THIS APPLICATION WAS MADE THE RESPONDENT EMPLOYED 93 EMPLOYEES IN THE BARGAINING UNIT OF WHOM THE APPLICANT CLAIMED 40 AS MEMBERS.
16. THE BOARD IS ACCORDINGLY SATISFIED THAT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT WERE MEMBERS OF THE APPLICANT AT THE TIME THIS APPLICATION WAS MADE, AS REQUIRED BY SECTION 8(4) OF THE ACT.

17. THIS APPLICATION IS ACCORDINGLY DISMISSED.

18. THE BOARD WILL NOT ENTERTAIN AN APPLICATION FOR CERTIFICATION BY THE APPLICANT WITH RESPECT TO ANY OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT WITHIN THE PERIOD OF SIX MONTHS FROM THE DATE HEREOF.

19. THE REGISTRAR WILL DESTROY THE BALLOTS CAST IN THE PRE-HEARING REPRESENTATION VOTE TAKEN IN THIS MATTER FOLLOWING THE EXPIRATION OF 30 DAYS FROM THE DATE OF THIS DECISION UNLESS A STATEMENT REQUESTING THAT THE BALLOTS SHOULD NOT BE DESTROYED IS RECEIVED BY THE BOARD FROM ONE OF THE PARTIES BEFORE THE EXPIRATION OF SUCH 30 DAY PERIOD.

DECISION OF BOARD MEMBER P. J. O'KEEFFE: APRIL 13, 1971.

MISS JUDY McEACHERN, TELEPHONE ORDER CLERK TESTIFIED THAT: "IN THE COURSE OF HER WORK, SHE HAS NO CONTACT WITH OTHER EMPLOYEES IN THE PLANT, AND THERE IS NO CONTACT WITH EMPLOYEES WHO MAKE DELIVERIES OF THE ORDERS SHE HAS TAKEN."

IN VIEW OF THE ABOVE AND FURTHER EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER, I FIND THAT THE FIVE TELEPHONE ORDER CLERKS HAVE NO COMMUNITY OF INTEREST WITH OTHERS IN THE BARGAINING UNIT AND I WOULD THEREFORE EXCLUDE THEM FROM THE UNIT.

WITH THE EXCLUSION OF THE FIVE TELEPHONE ORDER CLERKS, THE APPLICANT HAS EVIDENCE OF MEMBERSHIP IN THE UNIT OF NOT LESS THAN 45%. I WOULD ORDER THAT THE BALLOTS ALREADY CAST IN THIS APPLICATION BE COUNTED.

18847-70-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. THE CORPORATION OF THE TOWN OF HESPELER (RESPONDENT) v. LOCAL UNION 804 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (INTERVENER) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND J. D. BELL.

APPEARANCES AT THE HEARING: W. A. ACTON AND E. A. MOYNES FOR THE APPLICANT; J. J. KELLY AND H. B. COUCH FOR THE RESPONDENT; B. J. BARNES FOR THE INTERVENER; AND DOUGLAS F. LLOYD FOR THE GROUP OF EMPLOYEES.

DECISION OF THE BOARD: APRIL 16, 1971.

. . .

2. IN THIS APPLICATION FOR CERTIFICATION THE APPLICANT IS SEEKING TO BE CERTIFIED AS BARGAINING AGENT FOR ALL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT SUPERINTENDENT, PERSONS ABOVE THE RANK OF SUPERINTENDENT, OFFICE STAFF AND PERSONS EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK. BOTH THE RESPONDENT AND THE OBJECTORS MAINTAIN THAT THE ABOVE EXCLUSIONS SHOULD ALSO ENCOMPASS THOSE PERSONS EMPLOYED BY THE TOWN OF HESPELER PARKS AND RECREATION AND COMMUNITY CENTRES COMMITTEE, (HEREINAFTER REFERRED TO AS THE COMMITTEE), AND ALSO THOSE PERSONS EMPLOYED BY THE CENTERY BOARD OF THE TOWN OF HESPELER, (HEREINAFTER REFERRED TO AS THE CEMETERY BOARD). THESE EXCLUSIONS APPEAR TO BE SOUGHT ON TWO GROUNDS, NAMELY, ON THE BASIS THAT THERE EXISTS NO COMMUNITY OF INTEREST BETWEEN THESE LATTER EMPLOYEES WITH THE REMAINING EMPLOYEES IN THE PROPOSED BARGAINING UNIT, AND BY REASON OF THE EXISTENCE OF CERTAIN BY-LAWS AFFECTING, RESPECTIVELY, THE COMMITTEE AND THE CEMETERY BOARD.

3. FOLLOWING THE INITIAL HEARING OF THIS MATTER ON JANUARY 20, 1971, AN EXAMINER WAS APPOINTED TO INQUIRE INTO AND REPORT BACK TO THE BOARD ON THE LIST OF EMPLOYEES FILED BY THE RESPONDENT IN THIS MATTER AND ON THE APPROPRIATENESS OF THE PROPOSED BARGAINING UNIT. THIS CULMINATED IN THE REPORT OF THE EXAMINER DATED MARCH 11, 1971, UPON WHICH, ORAL REPRESENTATIONS WERE ENTERTAINED BY THIS BOARD ON APRIL 7, 1971.

4. WE SHALL DEAL FIRSTLY WITH THE ISSUE AS TO WHETHER THE EMPLOYEES OF THE COMMITTEE ARE APPROPRIATE FOR INCLUSION IN THE ALL EMPLOYEE UNIT AS PROPOSED BY THE APPLICANT.

5. IT IS NOT IN DISPUTE THAT THE COMMITTEE IS RESPONSIBLE FOR THE OPERATION OF THE POOL, ARENA AND PARK FACILITIES OF THE RESPONDENT. THE EVIDENCE OF STANLEY MOORE, WHO IS IN CHARGE OF THE EMPLOYEES OF THE COMMITTEE, FURTHER DISCLOSES THAT HE ANSWERS ONLY TO THE COMMITTEE AND NOT TO THE MUNICIPAL COUNCIL OF THE RESPONDENT. IT IS TO THE FORMER BODY AND TO NO ONE ELSE THAT HE DIRECTS RECOMMENDATIONS AS TO POLICY, FINANCIAL MATTERS AND OTHER SUNDRY OBJECTS REGARDING THE PARKS, RECREATION, ARENA AND POOL FACILITIES AND TO WHICH HE LOOKS TO FOR GUIDANCE AS HIS BOSS OR EMPLOYER. ALTHOUGH THE PAY RECORDINGS OF THE EMPLOYEES COMING UNDER HIS JURISDICTION ARE MADE THROUGH THE RESPONDENT'S ACCOUNTING SECTION, THEIR WAGES ARE DETERMINED ON THE BASIS OF MR. MOORE'S RECOMMENDATIONS IN CONSULTATION WITH THE COMMITTEE. THE MUNICIPAL COUNCIL, IT WOULD APPEAR, HAS NO CONTROL NOR JURISDICTION OVER THESE EMPLOYEES. HIS EVIDENCE FURTHER REVEALS THAT THE COMMITTEE DRAWS UP ITS OWN BUDGET TO OPERATE ON AND IN HIS OWN WORDS, "WE ARE ON OUR OWN."

6. THE RELEVANT LEGISLATION AFFECTING THE COMMITTEE APPEARS IN THE PUBLIC PARKS ACT, R.S.O. 1960, CHAPTER 329, AND AMENDMENTS THERETO. UPON ADOPTION OF THIS ACT BY A MUNICIPALITY, SECTION 3 PROVIDES FOR THE

SETTING UP OF A BOARD ("THE BOARD OF PARK MANAGEMENT") FOR THE MANAGEMENT, REGULATION AND CONTROL OF ALL PARKS BELONGING TO A MUNICIPALITY. UNDER SECTION 4, THIS BOARD IS GIVEN THE STATUS OF A CORPORATION.

7. IN THIS REGARD, THE RESPONDENT FILED BY-LAW No. 223 (AS EXHIBIT #1) IN THESE PROCEEDINGS, EVIDENCING THE ADOPTION OF THE PUBLIC PARKS ACT BY THE MUNICIPAL COUNCIL OF THE RESPONDENT ON MARCH 18, 1907.

8. THE ONLY OTHER LEGISLATION DIRECTLY AFFECTING THE STATUS OF THE COMMITTEE IS FOUND IN THE DEFINITION SECTION OF THE DEPARTMENT OF MUNICIPAL AFFAIRS ACT, R.S.O. 1960, CHAPTER 98, AND AMENDMENTS THERETO. SECTION 1(F) INCLUDES IN THE DEFINITION OF A "MUNICIPALITY" A LOCAL BOARD OF A TOWN. "LOCAL BOARD" AS DEFINED IN SECTION 1(D) SPECIFICALLY INCLUDES A BOARD OF PARK MANAGEMENT. IN OUR OPINION, THEREFORE, THE COMMITTEE DOES QUALIFY AS A MUNICIPALITY WITHIN THE MEANING OF THIS ACT.

9. IN MAINTAINING THAT THE EMPLOYEES OF THE COMMITTEE SHOULD BE INCLUDED IN THE PROPOSED BARGAINING UNIT, THE APPLICANT HAS LAID GREAT STRESS UPON THE CORPORATION OF THE TOWNSHIP OF MARKHAM CASE, (O.L.R.B. M.R. AUGUST, 1969, P.592) WHEREIN THE APPLICANT SOUGHT A BARGAINING UNIT FOR ALL EMPLOYEES OF THE TOWNSHIP IN A NAMED DEPARTMENT. IN DISMISSING THE APPLICATION UPON FINDING THAT THE APPROPRIATE UNIT ENCOMPASSED ALL OUTSIDE EMPLOYEES, THE BOARD REITERATED ITS AVERSION TO THE FRAGMENTATION OF BARGAINING UNITS.

10. HAVING REVIEWED THE RELEVANT LEGISLATION, AS INDICATED ABOVE, WE ARE SATISFIED THAT THE COMMITTEE FUNCTIONS AS AN INDEPENDENT ENTITY, SEPARATE AND APART FROM THE OPERATION OF THE RESPONDENT. NOT ONLY IS THIS COMMITTEE DEEMED A SEPARATE CORPORATION UNDER THE PUBLIC PARKS ACT, BUT MOREOVER IT WOULD ALSO APPEAR TO HAVE ACQUIRED THE STATUS OF A SEPARATE MUNICIPALITY UNDER THE DEPARTMENT OF MUNICIPAL AFFAIRS ACT. ACCORDINGLY, WE FIND THAT THE COMMITTEE STANDS SEPARATE AND APART FROM THE DEPARTMENTS NORMALLY FOUND WITHIN A MUNICIPAL FRAMEWORK. ON THIS BASIS ALONE, WE ARE OF THE OPINION THAT THE FACTS IN THE CORPORATION OF THE TOWNSHIP OF MARKHAM CASE (SUPRA), ARE CLEARLY DISTINGUISHABLE.

11. OUR FINDING IN THIS RESPECT IS FURTHER BOLSTERED BY THE UNCONTRADICTED EVIDENCE OF MR. MOORE, AS DISCLOSED IN PARAGRAPH #5, AND WE HAVE THEREFORE NO HESITATION AT THIS POINT IN FINDING THAT THE COMMITTEE OPERATES AS A FUNCTIONALLY INDEPENDENT ENTITY SUCH THAT IT WOULD BE INAPPROPRIATE TO INCLUDE PERSONS EMPLOYED THEREIN WITH THE REMAINDER OF THE EMPLOYEES IN THE PROPOSED UNIT. IN THIS REGARD, WE NOTE THAT THE COMMITTEE OPERATES UNDER A SEPARATE BUDGET, WHICH ALSO HAS THE ULTIMATE AUTHORITY TO HIRE AND FIRE ITS EMPLOYEES. ALTHOUGH THE APPLICANT HAS ALLEGED THAT INTERCHANGE OF EMPLOYEES DOES OCCUR,

WE ARE NOT SATISFIED THAT THE EVIDENCE AS PRESENTED BEFORE US SUBSTANTIATES THIS ALLEGATION.

12. AS A FINAL POINT, WE DRAW TO THE ATTENTION OF THE PARTIES SECTION 6(1) OF THE LABOUR RELATIONS ACT WHICH, INTER ALIA, PROVIDES THAT "THE WISHES OF THE EMPLOYEES AS TO THE APPROPRIATENESS OF THE UNIT" MAY BE ANOTHER FACTOR TO BE CONSIDERED. (SEE THE YORK-OSHAWA DISTRICT HEALTH UNIT CASE, O.L.R.B. M.R. JUNE 1969, P.340 AT PAGE 347). IN THIS REGARD, THE BOARD NOTES THAT A "PETITION" DATED JANUARY 12, 1971, WAS FILED WITH THE BOARD SIGNED BY ALL FOUR EMPLOYEES OF THE COMMITTEE, INDICATING THAT THEY DID NOT WISH TO BECOME MEMBERS OF THE APPLICANT. ALTHOUGH MR. LLOYD, THE SPOKESMAN FOR THIS GROUP, ATTENDED BOTH HEARINGS HELD BEFORE THIS BOARD AND MADE CERTAIN REPRESENTATIONS BEFORE US, HE WAS NOT CALLED UPON TO PROVE THE ORIGINATION AND CIRCULATION OF THE DOCUMENT AS IT WAS NOT RELEVANT TO THE COUNT. NEVERTHELESS, WE ARE SATISFIED THAT THERE IS SOME EVIDENCE BEFORE US INDICATING THE DESIRES OF THE EMPLOYEES CONCERNED.

13. THE NEXT MATTER TO BE DEALT WITH CONCERNS THE ISSUE AS TO WHETHER THE EMPLOYEES OF THE CEMETERY BOARD ARE APPROPRIATE FOR INCLUSION IN THE ALL-EMPLOYEE UNIT AS PROPOSED BY THE APPLICANT.

14. THE EVIDENCE OF WILLIAM CENSNER, CLASSIFIED BY THE RESPONDENT AS "CEMETERY SUPERINTENDENT", DISCLOSES THAT AS OF THE DATE OF THIS APPLICATION HE EXERCISED SUPERVISION OVER ONLY ONE EMPLOYEE, NAMELY, WILLIAM CUTTING. HIS EVIDENCE FURTHER REVEALS THAT HE RECEIVES HIS INSTRUCTIONS OR DIRECTIONS ONLY FROM ERNEST CONNELL, THE CHAIRMAN OF THE CEMETERY BOARD WHO IS NOT A CITY EMPLOYEE. HE REPORTS BACK TO THE CEMETERY BOARD AT ITS MONTHLY MEETING, ON THE ACTIVITIES INVOLVING THE CEMETERY DURING THE PAST MONTH. ALTHOUGH HE HAS NEVER HIRED FULL TIME EMPLOYEES, HE MAY HIRE PART-TIME OR SEASONAL EMPLOYEES, BUT ONLY WITH THE APPROVAL OF THE CHAIRMAN. IN ALL DEALINGS WITH PERSONNEL EMPLOYED BY THE CEMETERY BOARD, IT WOULD APPEAR THAT THERE IS NO PARTICIPATION BY THE MUNICIPALITY. WHEN ASKED IF HE WOULD CARRY OUT AN ORDER REGARDING THE CEMETERY ISSUED TO HIM FROM A COUNCILMAN, HE REPLIED THAT HE WOULD NOT CARRY IT OUT.

15. THE RELEVANT LEGISLATION AFFECTING THE CEMETERY BOARD IS FOUND IN THE CEMETERIES ACT, R.S.O. 1960, CHAPTER 47, AND AMENDMENTS THERETO. SECTION 67 OF THIS ACT PROVIDES FOR THE TRANSFER FROM A TOWN OF THE CONTROL AND MANAGEMENT OF ITS CEMETERIES TO A BOARD.

16. IN THIS CONNECTION, THE RESPONDENT FILED BY-LAW #1602 (EXHIBIT #2) IN THESE PROCEEDINGS, EVIDENCING THE VESTING OF THE CONTROL AND MANAGEMENT OF ITS CEMETERIES TO THE CEMETERY BOARD. THIS BY-LAW WAS PASSED BY THE MUNICIPALITY ON DECEMBER 21, 1970.

17. AT THE SUBSEQUENT HEARING OF THIS MATTER HELD ON APRIL 7,

1971, THE RESPONDENT INDICATED THAT AS OF THE DATE OF THIS APPLICATION FOR CERTIFICATION, NAMELY, JANUARY 4, 1971, THE REQUIRED APPROVAL OF THE DEPARTMENT OF HEALTH HAD NOT BEEN OBTAINED ALTHOUGH THE BY-LAW WAS MAILED TO THE DEPARTMENT IN DECEMBER OF 1970. IN THIS REGARD, WE FIND THAT THE CRUCIAL DATE IS THE DATE OF THE PASSING OF THE BY-LAW AND NOT THE DATE OF APPROVAL BY THE DEPARTMENT, AND IT WOULD THEREFORE FOLLOW THAT THE CEMETERY BOARD WAS PROPERLY IN EXISTENCE AT THE DATE OF THIS APPLICATION. (IN THIS REGARD, SEE CENTRAL JEWISH INSTITUTE V. TORONTO [1948] 2 D.L.R. 1 (S.C.C.))

18. THE PROVISIONS OF THE DEPARTMENT OF MUNICIPAL AFFAIRS ACT (SUPRA), RELEVANT TO THE CEMETERY BOARD IN THAT IT WOULD, PURSUANT TO SECTION 1(D), APPEAR TO QUALIFY AS A "BOARD.....ESTABLISHED OR EXERCISING ANY POWER OR AUTHORITY UNDER ANY GENERAL OR SPECIAL ACT WITH RESPECT TO ANY OF THE AFFAIRS OR PURPOSES.....OF A MUNICIPALITY." ACCORDINGLY, THIS CEMETERY BOARD WOULD APPEAR TO QUALIFY AS A MUNICIPALITY WITHIN THE MEANING OF SECTION 1(F) OF THE ACT.

19. HAVING CAREFULLY REVIEWED ALL OF THE EVIDENCE IN THIS REGARD, WE ARE SATISFIED THAT THE CEMETERY BOARD FUNCTIONS AS AN INDEPENDENT ENTITY, SEPARATE AND APART FROM THE OPERATIONS OF THE RESPONDENT, SUCH THAT IT WOULD NOT BE APPROPRIATE TO INCLUDE ITS EMPLOYEES IN THE BARGAINING UNIT AS PROPOSED BY THE APPLICANT.

. . .

21. HAVING REGARD TO ALL OF THESE CIRCUMSTANCES, WE THEREFORE FIND THAT EMPLOYEES OF THE TOWN OF HESPELER PARKS AND RECREATION AND COMMUNITY CENTRES COMMITTEE AND EMPLOYEES OF THE CEMETERY BOARD OF THE TOWN OF HESPELER ARE NOT EMPLOYEES OF THE RESPONDENT AND THEREFORE EXCLUDED FROM THE BARGAINING UNIT AS SET OUT IMMEDIATELY BELOW.

22. THE BOARD FINDS THAT ALL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT SUPERINTENDENT AND PERSONS ABOVE THE RANK OF SUPERINTENDENT, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, CONSTITUTE A UNIT OF EMPLOYEES APPROPRIATE FOR COLLECTIVE BARGAINING.

23. THE BOARD NOTES THE AGREEMENT OF THE PARTIES TO THE EFFECT THAT THOSE EMPLOYEES COVERED BY A SUBSISTING COLLECTIVE AGREEMENT DATED APRIL 1, 1970, ENTERED INTO BETWEEN THE HYDRO ELECTRIC POWER COMMISSION OF THE TOWN OF HESPELER AND LOCAL UNION 804 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, ARE NOT EMPLOYEES OF THE RESPONDENT AND THEREFORE ARE EXCLUDED FROM THE BARGAINING UNIT.

24. THE BOARD NOTES THE FURTHER AGREEMENT OF THE PARTIES TO THE EFFECT THAT ALL EMPLOYEES IN THE BOARD OF WORKS AND WATER WORKS DEPARTMENTS ARE INCLUDED IN THE BARGAINING UNIT.

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26. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

18902-70-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 749
(APPLICANT) v. MALLORY HARDWARE PRODUCTS LTD. (RESPONDENT) v. GROUP
OF EMPLOYEES (OBJECTORS).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND
P.J. O'KEEFFE.

APPEARANCES AT THE HEARING: J.R. BOXMA AND PETER DHEAN FOR THE AP-
PLICANT; HAROLD J. O'BRIEN, Q.C., FRANK MALLORY AND RAEBORNE MALLORY
FOR THE RESPONDENT; R.C. FILION, JESSE GANDER FOR THE GROUP OF EM-
PLOYEES.

DECISION OF O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBER P.J. O'KEEFFE:
APRIL 14, 1971.

. . .

2. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT
AT THE TOWNSHIP OF HARWICH, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE
THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED
FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE
SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPON-
DENT APPROPRIATE FOR COLLECTIVE BARGAINING.

3. FOR THE PURPOSE OF CLARITY THE BOARD NOTES THE AGREEMENT OF
THE PARTIES THAT TRAINEES ON A REHABILITATION PROGRAM WITH THE ONTARIO
HOSPITAL ARE NOT INCLUDED IN THE BARGAINING UNIT.

4. IN THIS CASE THE GROUP OF EMPLOYEES FILED A STATEMENT OF
DESIRE AND THE BOARD ACCORDINGLY INQUIRED INTO THE ORIGATION AND
CIRCULATION OF THAT DOCUMENT. THE EVIDENCE INDICATED THAT MR. G.
RIVERS, WHO IS A LONG TIME EMPLOYEE OF THE COMPANY, FOUND OUT THAT
THE UNION WAS ORGANIZING THE EMPLOYEES AND ON FRIDAY, JANUARY 15,
1971, PRIOR TO ANY APPLICATION FOR CERTIFICATION BEING FILED, OB-
TAINED THE SIGNATURES OF A NUMBER OF EMPLOYEES ON A PETITION (HERE-
INAFTER REFERRED TO AS THE FIRST PETITION). HE THEN ATTENDED AT THE
COMPANY'S OFFICE WHERE HE SHOWED THE FIRST PETITION TO MR. FRANK MAL-
LORY, A MEMBER OF MANAGEMENT. MR. MALLORY LOOKED AT THE FIRST PETI-
TION AND THEN MR. GANDER LEFT THE OFFICE WITH THE PETITION.

5. UNTIL THAT TIME MR. MALLORY WAS NOT AWARE OF A UNION ORGAN-
IZATION CAMPAIGN. THE EVIDENCE INDICATES THAT THE EMPLOYEES WERE
AWARE THAT MR. GANDER HAD TAKEN THE FIRST PETITION INTO HIS EMPLOYER'S
OFFICE. MR. GANDER SUBSEQUENTLY HAD SOME DISCUSSION WITH A LAWYER
ABOUT THE FIRST PETITION, BUT NOTHING FURTHER WAS DONE WITH IT.

6. ON JANUARY 18, 1971, THE COMPANY ANNOUNCED THAT IT WAS GIVING CERTAIN EMPLOYEES A RAISE AND ON JANUARY 18 THE UNION FILED AN APPLICATION FOR CERTIFICATION. NOTICE OF THE APPLICATION WAS RECEIVED BY THE COMPANY ON JANUARY 19 AND ON JANUARY 22 THE INCREASE IN WAGES WAS WITHDRAWN AND A NOTICE IN THE FOLLOWING FORM WAS GIVEN TO EACH EMPLOYEE:

"JANUARY 22, 1971

TO ALL EMPLOYEES

IN VIEW OF THE FACT THAT APPLICATION HAS BEEN MADE FOR CERTIFICATION THE ONTARIO LABOUR ACT PROVIDES THAT WITHOUT THE CONSENT OF THE UNION WORKING CONDITIONS CANNOT BE CHANGED, AND THEREFORE THE ANNOUNCED INCREASE IN WAGES WILL HAVE TO BE WITHDRAWN.

COMPANY MANAGEMENT IS UNABLE TO AND PREVENTED BY LAW FROM DISCUSSING THE MATTER OF THE UNION WITH ANY EMPLOYEES.

IF YOU HAVE ANY INQUIRIES OR WISH TO PURSUE ANY FORM OF CONDUCT, YOU WILL HAVE TO OBTAIN THE ANSWERS ELSEWHERE.

YOURS VERY TRULY,

MALLORY HARDWARE PRODUCTS LIMITED

F. W. MALLORY ----- PRESIDENT"

7. ON JANUARY 23 MR. GANDER TOOK UP ANOTHER PETITION (HEREIN-AFTER REFERRED TO AS THE SECOND PETITION), WHICH WAS FILED WITH THIS APPLICATION AND WHICH IT IS SUBMITTED CASTS DOUBT ON THE EVIDENCE OF MEMBERSHIP. IN VIEW OF THE EXTENSIVE AND ABLE ARGUMENT SUBMITTED IN THIS MATTER IT IS PERHAPS DESIRABLE TO REVIEW THE RELEVANT PRINCIPLES OF THE LEGISLATION AND DECISIONS APPLICABLE TO STATEMENTS OF DESIRE OR PETITIONS AS THEY ARE COMMONLY KNOWN.

8. ONE OF THE PURPOSES OF THE LABOUR RELATIONS ACT IS TO PROMOTE INDUSTRIAL PEACE AND TO THAT END THE LEGISLATION HAS ATTEMPTED TO CREATE AN INDUSTRIAL DEMOCRACY WHERE EMPLOYEES MAY VOLUNTARILY EXPRESS THEIR DESIRES. THIS CONCEPT OF FREEDOM FOR EMPLOYEES IS EXPRESSLY CONTAINED IN THE LABOUR RELATIONS ACT. SECTION 3 PROVIDES THAT EVERY PERSON IS FREE TO JOIN A TRADE UNION; SECTION 7(5) PROVIDES THAT THE BOARD MAY CERTIFY A TRADE UNION WITHOUT A VOTE IF THE TRUE

WISHES OF THE EMPLOYEES ARE NOT LIKELY TO BE DISCUSSED; SECTION 43(3) DEALING WITH TERMINATION PROVIDES THAT EMPLOYEES SHALL "HAVE VOLUNTARILY SIGNIFIED IN WRITING...". THE UNFAIR PRACTICE PROVISIONS OF THE ACT PROVIDE GENERALLY THAT EMPLOYEES ARE TO REMAIN FREE FROM COERCION, INTIMIDATION, THREATS OR UNDUE INFLUENCE.

9. THIS CONCEPT OF INDUSTRIAL FREEDOM AND DEMOCRACY AFFORDED TO EMPLOYEES IS ALSO INTENDED TO PROHIBIT IMPROPER INFLUENCES BY UNIONS. IN SUDBURY MINE, MILL & SMELTER WORKERS' UNION, LOCAL 598, OF THE INTERNATIONAL UNION OF MINE, MILL & SMELTER WORKERS, AND MILNET MINES LIMITED (CAPREOL), AND UNITED STEELWORKERS OF AMERICA, C.I.O.-C.C.L. 1953 CCH LLR TRANSFER BINDER 49 TO 54 PARA. 13113, THE BOARD IN REFERRING TO A UNION ORGANIZATIONAL CAMPAIGN STATED:

"INDEED THE ACTIONS OF THE APPLICANT HAVE MADE IT IMPOSSIBLE FOR THE BOARD AT THIS TIME TO ASCERTAIN IN ANY MANNER THE TRUE WISHES OF THE EMPLOYEES AFFECTED. IN VIEW OF WHAT HAS OCCURRED, IT IS REASONABLE TO INFER THAT MANY OF THE EMPLOYEES WOULD PROBABLY HAVE BEEN AFRAID AT THE TIME OF THE HEARING OF THIS APPLICATION TO MARK A BALLOT IN OPPOSITION TO THE APPLICANT. INTIMIDATION OF THE NATURE FOUND HERE HAS A CONTINUING EFFECT AND IT IS IMPOSSIBLE FOR US TO SAY THAT THE EFFECT OF THE IMPROPER INFLUENCE EXERTED BY THE APPLICANT HAS AS YET BEEN DISSIPATED. IN VIEW OF THESE CONSIDERATIONS, THE BOARD HAS NO ALTERNATIVE BUT TO DISMISS THE APPLICATION."

(EMPHASIS ADDED)

SEE ALSO INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AGRICULTURAL IMPLEMENT WORKERS OF AMERICA V. CANADIAN FABRICATED PRODUCTS LIMITED (STRATFORD) AND FEDERAL UNION LOCAL NO. 563, THE TRADES AND LABOUR CONGRESS OF CANADA 1954 CCH LLR, TRANSFER BINDER, 49 TO 54 PARA. 13162; CLS 76-465 (OLRB). UNITED STEELWORKERS OF AMERICA AND THE INTERNATIONAL NICKEL COMPANY OF CANADA ET AL 63 CLLC 1176 1962 NOVEMBER, OLRB MTHLY. REP., 299.

10. IN BAKERY AND CONFECTIONERY WORKERS' INTERNATIONAL UNION OF AMERICA, LOCAL 264 V. INTER CITY BAKING COMPANY LIMITED (EASTERN AVENUE, TORONTO PLANT OF ITS BROWNS'-BREAD DIVISION), 1960 DECEMBER, OLRB, MTHLY. REP., 319, IN ASSESSING STATEMENTS MADE TO CERTAIN EMPLOYEES BY REPRESENTATIVES OF MANAGEMENT PRIOR TO A VOTE THIS BOARD SAID:

"SUCH CONDUCT DISPLAYS A STUDIED CONTEMPT OF THE PRINCIPLES OF FREEDOM OF CHOICE IMPLICIT IN THE ACT."

(EMPHASIS ADDED)

11. THE CONCEPT OF INDUSTRIAL FREEDOM MUST BE ASSESSED AGAINST THE SENSITIVE NATURE OF THE EMPLOYER-EMPLOYEE RELATIONSHIP WHICH HAS BEEN DESCRIBED BY THIS BOARD IN WELDERS, PUBLIC GARAGE EMPLOYEES, MOTOR MECHANICS AND ALLIED WORKERS LOCAL UNION 847 AND PIGGOTT MOTORS (1961) LIMITED, 1962 63 CLLC PARA. 16,264, AS FOLLOWS:

"IN VIEW OF THE RESPONSIVE NATURE OF HIS RELATIONSHIP WITH HIS EMPLOYER, AND, OF HIS NATURAL DESIRE TO WANT TO APPEAR TO IDENTIFY HIMSELF WITH THE INTERESTS AND WISHES OF HIS EMPLOYER, AN EMPLOYEE IS OBVIOUSLY PECULIARLY VULNERABLE TO INFLUENCES, OBVIOUS OF DEVIOUS, WHICH MAY OPERATE TO IMPAIR OR DESTROY THE FREE EXERCISE OF HIS RIGHTS UNDER THE ACT..."

12. A SIMILAR VIEW WAS EXPRESSED IN THE RECENT DECISION OF NLRB V. GISSEL PACKING CO., INC., 60 LC 16,493 AT 16,509 (US. S. CT. 1969). IN DISCUSSING THE RIGHTS OF EMPLOYER EXPRESSION AGAINST THE RIGHTS OF EMPLOYEES TO ASSOCIATE FREELY THE SUPREME COURT OF THE UNITED STATES SAID:

"...AND ANY BALANCING OF THOSE RIGHTS MUST TAKE INTO ACCOUNT THE ECONOMIC DEPENDENCE OF THE EMPLOYEES ON THEIR EMPLOYERS, AND THE NECESSARY TENDENCY OF THE FORMER, BECAUSE OF THAT RELATIONSHIP, TO PICK UP INTENDED IMPLICATIONS OF THE LATTER THAT MIGHT BE MORE READILY DISMISSED BY A MORE DISINTERESTED EAR. STATING THESE OBVIOUS PRINCIPLES IS BUT ANOTHER WAY OF RECOGNIZING THAT WHAT IS BASICALLY AT STAKE IS THE ESTABLISHMENT OF A NONPERMANENT, LIMITED RELATIONSHIP BETWEEN THE EMPLOYER, HIS ECONOMICALLY DEPENDENT EMPLOYEE AND HIS UNION AGENT, NOT THE ELECTION OF LEGISLATORS OR THE ENACTMENT OF LEGISLATION WHEREBY THAT RELATIONSHIP IS ULTIMATELY DEFINED AND WHERE THE INDEPENDENT VOTER MAY BE FREER TO LISTEN MORE OBJECTIVELY AND EMPLOYERS AS A CLASS FREER TO TALK."

13. IT IS IN THIS CLIMATE OF EMPLOYER-EMPLOYEE RELATIONSHIPS

THAT PETITIONS ARE WEIGHED. IT MUST ALSO BE REMEMBERED THAT PETITIONS ARE ONLY CONSIDERED BY THIS BOARD WHERE EMPLOYEES WHO VOLUNTARILY SIGN UNION MEMBERSHIP EVIDENCE SEEK TO HAVE THE BOARD REJECT THAT EVIDENCE. THE FUNCTION OF THE BOARD IS TO OBJECTIVELY ASCERTAIN WHETHER THE PETITION REPRESENTS THE VOLUNTARY OR FREE WISHES OF THE EMPLOYEES. THE ISSUE IS NOT WHETHER MANAGEMENT HAS IN FACT COMMITTED AN UNFAIR LABOUR PRACTICE. SEE UNITED STEELWORKERS OF AMERICA V. DOME MINES LIMITED V. GROUP OF EMPLOYEES, 1969 MAY OLRB MTHLY. REP. 196. THE BOARD USES AN OBJECTIVE TEST BOTH BECAUSE IT ATTEMPTS TO MAINTAIN THE SECRECY OF MEMBERSHIP EVIDENCE UNDER SECTION 83, AND BECAUSE VERY LITTLE WEIGHT OR NO WEIGHT CAN BE GIVEN TO EVIDENCE BY EMPLOYEES WHO HAVE BEEN SUBJECT TO UNDUE INFLUENCE. UNITED STEELWORKERS OF AMERICA V. LINREAD CANADA LIMITED CLS 76-1088 OLRB; COMPARE WITH NLRB V. GISSEL PACKING CO., INC., SUPRA.

14. THESE PRINCIPLES ARE READILY APPARENT IF ONE EXAMINES THE BOARD'S DECISIONS IN THIS AREA. FOR EXAMPLE, THE BOARD HAS REFUSED TO GIVE WEIGHT TO PETITIONS WHERE THE CIRCULATOR OF A PETITION EXERCISES A DEGREE OF AUTHORITY WHICH REASONABLY INDUCED EMPLOYEES TO BELIEVE HE WAS A FOREMAN AND POSSESSED POWER TO AFFECT THEIR EMPLOYMENT STATUS, LINK MANUFACTURING CASE (UNREPORTED) 1954 OLRB BOARD FILE #48682-53; WHERE THE MANNER OF CIRCULATION INDICATED THE KNOWLEDGE AND TACIT ASSENT OF THE COMPANY, INTERNATIONAL UNION, UNITED AUTOMOBILE AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) V. HAYES STEEL PRODUCTS LIMITED, APRIL 1964 OLRB MTHLY. REP., 30; AND WHERE THE EMPLOYEE CIRCULATOR ADVISED EMPLOYEES HE WOULD USE THE STATEMENT OF DESIRE IN APPROACHING MANAGEMENT, INTERNATIONAL UNION OF DISTRICT 50, U.M.W.A. V. ROXALIN OF CANADA LIMITED DECEMBER 1967 OLRB MTHLY. REP., 867.

15. WHEN WE APPLY THOSE CONSIDERATIONS TO THE PRESENT CASE WE ARE OF THE OPINION THAT THE SECOND PETITION DOES NOT REFLECT THE VOLUNTARY WISHES OF THE EMPLOYEES. THE INFERENCE TO BE DRAWN BY THE EMPLOYEES UPON RECEIVING A RAISE IN A PRECIPITOUS MANNER - A RAISE WHICH HAD BEEN DISCUSSED SOME MONTHS EARLIER, WOULD BE THAT THE RAISE WAS A RESULT OF THEIR OPPOSITION TO THE UNION WHICH WAS REFLECTED IN THE FIRST PETITION. THE SUBSEQUENT WITHDRAWAL OF THE RAISE UPON THE FILING OF THE APPLICATION FOR CERTIFICATION WOULD ONLY CONFIRM TO THE EMPLOYEES THAT THEIR WORKING CONDITIONS AT LEAST WITH RESPECT TO WAGES WERE TIED TO THEIR OPPOSITION OR SUPPORT FOR THE TRADE UNION. THE SIGN POSTS WERE CLEAR - HAVING REGISTERED OPPOSITION TO THE UNION THE EMPLOYEES HAD RECEIVED A RAISE AND THE UNION THEN HAVING APPLIED FOR CERTIFICATION THE RAISE WAS THEN WITHDRAWN. THE REASONABLE INFERENCE TO BE DRAWN FROM THE FACTORS OF THIS CASE IS THAT THE EMPLOYEES SIGNED THE SECOND PETITION WITH THE HOPE THAT THEIR ECONOMIC INTERESTS WOULD AGAIN BE FAVOURED. THEY WERE AWARE THAT THEIR EMPLOYER HAD SEEN THE FIRST PETITION AND THE IMPLICATION WAS THAT HE WOULD SEE THE SECOND PETITION WHICH RESULTED IN AN EXAGGERATED DESIRE

TO SIGN THE PETITION AS INDICATED IN THEIR SEEKING OUT MR. GANDER AND ATTENDING AT HIS HOME DURING THE LUNCH HOUR TO SIGN THAT SECOND PETITION. ACCORDINGLY, WE ARE SATISFIED THAT THE SECOND PETITION DOES NOT REFLECT THE VOLUNTARY WISHES OF THE EMPLOYEES.

16. COUNSEL FOR THE EMPLOYER SUBMITTED THAT THE WITHDRAWAL OF THE RAISE WAS BONA FIDE BECAUSE THE INTRODUCTION OF THE WAGE RAISE IN THE CIRCUMSTANCES OUTLINED MIGHT HAVE BEEN CONSIDERED TO HAVE BEEN A BRIBE TO THE EMPLOYEES TO WITHDRAW THEIR SUPPORT FROM THE UNION. AS WE INDICATED, WE DO NOT QUESTION THE BONA FIDES OF THE EMPLOYEES' ACTIONS, RATHER WE ARE CONCERNED AS TO THE AFFECT OF THE EVENTS IMPLEMENTED BY THE EMPLOYER ON THE EMPLOYEES AND THE RELATIONSHIP OF THE EMPLOYER'S ACTIONS TO THE ACTIONS OF THE EMPLOYEES. ACCORDINGLY WE DO NOT ACCEPT THE SECOND PETITION AS CASTING DOUBT ON THE EVIDENCE OF MEMBERSHIP.

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18. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DISSENT OF BOARD MEMBER J.D. BELL: APRIL 14, 1971.

1. I AM NOT IN AGREEMENT WITH THE MAJORITY DECISION. BASED ON THE FACTS PRESENTED AT THE HEARING I FIND THAT THE PETITION DOES CAST DOUBT ON THE EVIDENCE OF MEMBERSHIP.

2. THE MAJORITY HAVE DEEMED IT NECESSARY TO REVIEW THE RELEVANT PRINCIPLES OF THE LEGISLATION AND DECISIONS APPLICABLE TO STATEMENTS OF DESIRE OR PETITIONS AS THEY ARE COMMONLY KNOWN. THIS GATHERING TOGETHER OF EXTRACTS FROM DECISIONS IN SOME 11 DIFFERENT CASES HEARD IN THE PAST 18 YEARS ON THE VARIOUS ASPECTS OF THE VALIDITY OF PETITIONS IS VERY INTERESTING. IT CONSOLIDATES INTO A SINGLE DOCUMENT A SERIES OF REFERENCES THAT MAY BE USEFUL. HOWEVER, IT LENDS VERY LITTLE TO THE INSTANT CASE, THE RESOLUTION OF WHICH MUST BE BASED ON THE FACTS PRESENTED AT THE HEARING.

3. THERE IS NO DISPUTE BETWEEN MYSELF AND THE MAJORITY OF THE BOARD ON THESE FACTS. ALSO, I NOTE THAT THE MAJORITY DOES NOT QUESTION THE BONA FIDES OF THE EMPLOYEES' ACTIONS.

4. THE EMPLOYER'S ACTION IN WITHDRAWING THE PROPOSED WAGE INCREASE WHICH HAD BEEN ANNOUNCED PRIOR TO THE RECEIPT OF THE NOTICE OF FILING OF AN APPLICATION FOR CERTIFICATION BY THE UNION WAS, IN MY OPINION, ALSO A BONA FIDE ACTION. IF IT HAD NOT BEEN DONE IT COULD HAVE BEEN INTERPRETED AS A BRIBE. I DO NOT ACCEPT THAT THIS ACTION PROMPTED AN EXAGGERATED DESIRE TO SIGN THE SECOND PETITION. THE DOUBT WAS ALREADY THERE AS EVIDENCED BY THE SIGNING OF THE FIRST PETITION.

5. THE MANAGEMENT DID NOT PARTICIPATE IN EITHER PETITION TAKEN UP BY MR. GANDER. FURTHERMORE, THE MANAGEMENT CANNOT BE HELD RESPONSIBLE FOR THE VOLUNTARY ACTION OF MR. GANDER IN APPROACHING MR. MALLORY AFTER THE FIRST PETITION AND ADVISING HIM WHAT HE HAD DONE.

6. THE BOARD SHOULD CONSIDER THE FACT THAT THE PETITIONS SUBMITTED BY MR. GANDER CONTAINS MORE NAMES THAN THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE UNION. IF WE ARE ATTEMPTING TO CREATE AN INDUSTRIAL DEMOCRACY WHERE EMPLOYEES MAY VOLUNTARILY EXPRESS THEIR DESIRES, WE SHOULD MAKE EVERY EFFORT TO OFFER THIS OPPORTUNITY TO ALL. THE EXISTENCE OF THIS PETITION SIGNED BY OVER 70 PER CENT OF THE EMPLOYEES MUST CAST DOUBT ON THE EVIDENCE OF MEMBERSHIP. THEREFORE, TO DETERMINE THE TRUE DESIRES OF THE EMPLOYEES, I WOULD DIRECT THE TAKING OF A REPRESENTATION VOTE.

18907-70-R: GENERAL TRUCK DRIVERS UNION LOCAL 938 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. DOMINION BRIDGE COMPANY LIMITED MOUNT DENNIS PLANT (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (INTERVENER #1) V. UNITED STEELWORKERS OF AMERICA (INTERVENER #2) V. DRAFTSMEN'S ASSOCIATION OF ONTARIO, LOCAL 164, AMERICAN FEDERATION OF TECHNICAL ENGINEERS, A.F.L.-C.I.O., C.L.C. (INTERVENER #3).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: I. J. THOMSON, W. REILLY AND H. SHELKIE FOR THE APPLICANT; JOHN P. SANDERSON AND WM. JEMISON FOR THE RESPONDENT; H. A. HERRON FOR INTERVENER #1; E. PARK, B. MUNRO, P. GALLACHER AND D. MARTIN FOR INTERVENER #2; L. H. ROSEN, AND R. DEANE FOR INTERVENER #3.

DECISION OF THE BOARD: APRIL 7, 1971.

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2. THIS APPLICATION FOR CERTIFICATION WAS FILED ON JANUARY 19, 1971.

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4. THE APPLICANT SEEKS CERTIFICATION FOR A GROUP OF EMPLOYEES WHICH IT DESCRIBES AS "ALL EMPLOYEES OF THE RESPONDENT COMPANY EMPLOYED AT AND WORKING OUT OF METROPOLITAN TORONTO SAVE AND EXCEPT FOREMEN, THOSE ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND THOSE EMPLOYEES COVERED BY SUBSISTING AGREEMENTS." AFTER ENTERTAIN-

ING THE REPRESENTATIONS OF THE PARTIES IT WAS AGREED BY ALL THE PARTIES THAT IN THE EVENT THAT THE HIGHWAY DRIVERS WHO HAUL STEEL (WHO ARE, IN FACT, THE EMPLOYEES FOR WHOM THE APPLICANT SEEKS CERTIFICATION) ARE FOUND NOT TO BE COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE UNITED STEELWORKERS OF AMERICA AND ITS LOCAL 3390, THEN A BARGAINING UNIT DESCRIBED IN TERMS OF "ALL HIGHWAY DRIVERS EMPLOYED AT THE MOUNT DENNIS PLANT OF THE RESPONDENT IN METROPOLITAN TORONTO WHO HAUL STEEL, SAVE AND EXCEPT SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR" WOULD CONSTITUTE AN APPROPRIATE BARGAINING UNIT AS A TAG END UNIT.

5. IN ORDER TO APPRECIATE THE PRESENT POSITION OF THE EMPLOYEES AFFECTED BY THIS APPLICATION, IT IS NECESSARY TO RETRACE THE HISTORY OF COLLECTIVE BARGAINING BETWEEN THE RESPONDENT AND THE UNITED STEELWORKERS OF AMERICA AND ITS LOCAL 3390 SINCE THE INCEPTION OF THE BARGAINING RELATIONSHIP IN 1945.

6. ON JANUARY 24, 1945, THE BOARD CERTIFIED THE UNITED STEELWORKERS OF AMERICA, LOCAL 3390 ON BEHALF OF A BARGAINING UNIT OF ALL HOURLY-RATED EMPLOYEES OF THE RESPONDENT AT ITS SHAW STREET PLANT WITH EXCEPTIONS NOT HERE MATERIAL. THE RESPONDENT AND THE UNITED STEELWORKERS OF AMERICA AND ITS LOCAL 3390 THEN ENTERED INTO A COLLECTIVE AGREEMENT IN MARCH 1945 FOR A PERIOD OF ONE YEAR. THIS COLLECTIVE AGREEMENT APPLIED TO ALL HOURLY RATED EMPLOYEES OF THE RESPONDENT AT ITS SHAW STREET PLANT IN TORONTO WITH EXCEPTIONS NOT HERE MATERIAL AND ESTABLISHED WAGE RATES FOR THE EMPLOYEES COVERED BY THE COLLECTIVE AGREEMENT. CODES 85 AND 86 OF THIS COLLECTIVE AGREEMENT ESTABLISHED WAGE RATES FOR TRUCK DRIVES (FIRST AND SECOND GRADE). IT WAS AGREED THAT CODES 85 AND 86 COVERED THE CLASSIFICATION OF HIGHWAY DRIVERS WHO HAUL STEEL.

7. SUCCESSIVE COLLECTIVE AGREEMENTS WERE ENTERED INTO BETWEEN THE RESPONDENT AND THE UNITED STEELWORKERS OF AMERICA AND ITS LOCAL 3390 DURING THE PERIOD FROM 1946 TO 1960. THESE COLLECTIVE AGREEMENTS APPLIED TO ALL HOURLY RATED EMPLOYEES, WITH EXCEPTIONS NOT HERE MATERIAL, INITIALLY AT THE RESPONDENT'S SHAW STREET PLANT AND, SUBSEQUENTLY, WHEN IT CHANGED THE LOCATION OF ITS OPERATIONS, TO ITS MOUNT DENNIS PLANT IN TORONTO. DURING THIS PERIOD THE SUCCESSIVE COLLECTIVE AGREEMENTS CONTAINED WAGE RATES FOR TRUCK DRIVES IN THE CLASSIFICATION OF HIGHWAY DRIVERS WHO HAUL STEEL. IN 1957, AS A RESULT OF A CO-OPERATIVE WAGE STUDY, THE HIGHWAY DRIVERS WHO HAUL STEEL WERE RECLASSIFIED AS PLANT CODE 179 - JOB CLASS 8. THIS CHANGE, WHICH OCCURRED ON APRIL 15, 1957, WAS REFLECTED IN A COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE UNITED STEELWORKERS OF AMERICA AND ITS LOCAL 3390 COVERING THE PERIOD FROM APRIL 16, 1957 UNTIL APRIL 15, 1959.

8. A STRIKE OCCURRED AT THE RESPONDENT'S MOUNT DENNIS PLANT

BETWEEN AUGUST AND NOVEMBER OF 1960 AND ON THE RESUMPTION OF WORK THE RESPONDENT CONTRACTED OUT THE WORK OF HAULING STEEL TO VARIOUS COMMON CARRIERS. THIS ARRANGEMENT FOR THE CONTRACTING OUT OF THE WORK OF HAULING STEEL CONTINUED UNTIL JANUARY 1970. ON THE BASIS OF THE EVIDENCE BEFORE IT, THE BOARD FINDS THAT THE HIGHWAY DRIVERS WHO HAULED STEEL FOR THE RESPONDENT BETWEEN NOVEMBER OF 1960 AND JANUARY 1970 WERE NOT EMPLOYEES OF THE RESPONDENT.

9. IN JANUARY 1970 THE RESPONDENT REVERTED TO ITS FORMER PRACTICE OF HAULING ITS OWN STEEL AND HIRED TRUCK DRIVERS TO EFFECT THIS PURPOSE. AT THE TIME THAT THESE TRUCK DRIVERS WERE HIRED BY THE RESPONDENT THERE WAS IN EXISTENCE A COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE UNITED STEELWORKERS OF AMERICA AND ITS LOCAL 3390 EFFECTIVE FROM AUGUST 15, 1968 UNTIL AUGUST 15, 1970. THIS COLLECTIVE AGREEMENT APPLIED TO ALL HOURLY RATED EMPLOYEES OF THE RESPONDENT AT ITS MOUNT DENNIS PLANT WITH EXCEPTIONS NOT HERE MATERIAL AND ESTABLISHED WAGE RATES FOR THE EMPLOYEES COVERED BY THE COLLECTIVE AGREEMENT. HOWEVER, THERE WAS NO REFERENCE TO TRUCK DRIVERS WHO HAUL STEEL UNDER THE HEADING OF JOB TITLES IN JOB CLASS 8 OR, INDEED, IN ANY OTHER PART OF THIS COLLECTIVE AGREEMENT.

10. DURING NEGOTIATIONS FOR A NEW COLLECTIVE AGREEMENT IN SEPTEMBER 1970, BETWEEN THE RESPONDENT AND THE UNITED STEELWORKERS OF AMERICA AND ITS LOCAL 3390, THE LATTER SUBMITTED CHECK-OFF CARDS FROM THE TRUCK DRIVERS WHO HAUL STEEL TO THE RESPONDENT AND CLAIMED TO REPRESENT THEM IN COLLECTIVE BARGAINING. IN ADDITION, ON SEPTEMBER 3, 1970, THE UNITED STEELWORKERS OF AMERICA AND ITS LOCAL 3390 LODGED A GRIEVANCE WITH THE RESPONDENT CONCERNING THE WAGES ALLEGEDLY DUE TO THE TRUCK DRIVERS WHO HAUL STEEL. IT APPEARED TO BE THE CONTENTION OF THE UNITED STEELWORKERS OF AMERICA AND ITS LOCAL 3390 THAT THESE TRUCK DRIVERS HAD NOT BEEN PAID THE RATE PROVIDED FOR UNDER JOB CLASS 8 IN THE RECENTLY EXPIRED COLLECTIVE AGREEMENT. THE CHECK-OFF CARDS WERE REJECTED BY THE RESPONDENT AND THE GRIEVANCE WAS DENIED BY THE RESPONDENT ON SEPTEMBER 16, 1970. THE GRIEVANCE WAS PROCEEDED WITH AS FAR AS THE ARBITRATION STEP (BUT WITHOUT ACTUAL ARBITRATION). HOWEVER, SINCE NOVEMBER 1970, NO ACTION HAS BEEN TAKEN ON THE ARBITRATION.

11. ON SEPTEMBER 17, 1970, THE RESPONDENT AND THE UNITED STEELWORKERS OF AMERICA AND ITS LOCAL 3390 SIGNED A NEW COLLECTIVE AGREEMENT EFFECTIVE FROM SEPTEMBER 14, 1970 UNTIL AUGUST 15, 1972, WHICH APPLIES TO ALL HOURLY RATED EMPLOYEES OF THE RESPONDENT AT ITS MOUNT DENNIS PLANT WITH EXCEPTIONS NOT HERE MATERIAL. WAGE RATES ARE ESTABLISHED IN THIS LATEST COLLECTIVE AGREEMENT WITH REFERENCE TO VARIOUS JOB TITLES WHICH ARE LISTED UNDER VARIOUS JOB CLASSES. THERE IS NO MENTION OF TRUCK DRIVERS WHO HAUL STEEL IN ANY PART OF THE COLLECTIVE AGREEMENT, ALTHOUGH JOB CLASS 8 IS CONTAINED THEREIN AND REFERS TO VARIOUS OTHER JOB TITLES.

12. IT WAS THE CONTENTION OF THE RESPONDENT AND THE UNITED STEELWORKERS OF AMERICA AND ITS LOCAL 3390 BEFORE THE BOARD THAT THE HIGHWAY DRIVERS WHO HAUL STEEL WERE COVERED BY THE CURRENT COLLECTIVE AGREEMENT AND THAT THIS APPLICATION IS UNTIMELY. THE APPLICANT CONTENDED THAT THE HIGHWAY DRIVERS WHO HAUL STEEL WERE NOT COVERED BY THIS CURRENT AGREEMENT AND HAD NOT BEEN COVERED BY ANY COLLECTIVE AGREEMENT SINCE 1960. MOREOVER, THE APPLICANT ALLEGED THAT THE HIGHWAY DRIVERS WHO HAUL STEEL HAD ACTUALLY BEEN EMPLOYEES OF THE RESPONDENT BETWEEN 1960 AND 1966 NOTWITHSTANDING THE ARRANGEMENTS ENTERED INTO BETWEEN THE RESPONDENT AND VARIOUS COMMON CARRIERS. THE APPLICANT, HOWEVER, ADDUCED NO EVIDENCE ON THE EMPLOYMENT STATUS OF THE HIGHWAY DRIVERS WHO HAULED STEEL DURING THIS PERIOD AND THE BOARD ACCEPTS THE EVIDENCE ADDUCED BY THE RESPONDENT ON THIS POINT. IT WAS ALSO THE APPLICANT'S CONTENTION THAT THE UNITED STEELWORKERS OF AMERICA AND ITS LOCAL 3390 HAD ABANDONED ITS BARGAINING RIGHTS WITH RESPECT TO THE HIGHWAY DRIVERS WHO HAUL STEEL BY REASON OF ITS CONDUCT SINCE 1960.

13. THE CURRENT COLLECTIVE AGREEMENT RAISED AS A BAR IN THE APPLICATION FOR CERTIFICATION, LIKE THE ONE WHICH PRECEDED IT, PURPORTS TO COVER ALL HOURLY RATED EMPLOYEES OF THE RESPONDENT AT ITS MOUNT DENNIS PLANT WITH EXCEPTIONS NOT HERE MATERIAL. HIGHWAY DRIVERS WHO HAUL STEEL ARE NOT SPECIFICALLY INCLUDED AMONG THOSE EXCEPTIONS. AFTER CAREFULLY REVIEWING ALL OF THE EVIDENCE INCLUDING THE FACT THAT WAGE RATES FOR TRUCK DRIVERS WHO HAUL STEEL ARE NOT GOVERNED BY THE CURRENT COLLECTIVE AGREEMENT, THE BOARD IS SATISFIED THAT IT WAS NOT INTENDED TO APPLY AND DOES NOT IN FACT APPLY TO THE TRUCK DRIVERS WHO HAUL STEEL AND THAT THEREFORE THE ARGUMENT THAT THE APPLICATION IS UNTIMELY MUST FAIL.

14. HOWEVER, WHILE THESE HIGHWAY DRIVERS WHO HAUL STEEL ARE NOT COVERED BY THE CURRENT COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE UNITED STEELWORKERS OF AMERICA AND ITS LOCAL 3390, THERE IS NO EVIDENCE BEFORE THE BOARD WHICH WOULD JUSTIFY A FINDING THAT THE LATTER HAS ABANDONED ITS BARGAINING RIGHTS WITH RESPECT TO THESE DRIVERS. THE UNITED STEELWORKERS OF AMERICA AND ITS LOCAL 3390 REPRESENTED THE HIGHWAY TRUCK DRIVERS WHO HAUL STEEL FROM 1945 UNTIL 1960 AND WERE UNABLE TO REPRESENT THIS CATEGORY OF EMPLOYEE BETWEEN NOVEMBER 1960 AND JANUARY 1970 SINCE THE RESPONDENT HAD NO EMPLOYEES IN THIS CATEGORY. WHILE THE UNITED STEELWORKERS OF AMERICA AND ITS LOCAL 3390 DID NOT SUCCEED IN INCLUDING THE HIGHWAY DRIVERS WHO HAUL STEEL IN THE CURRENT COLLECTIVE AGREEMENT SIGNED IN SEPTEMBER 1970, THERE IS EVIDENCE BEFORE THE BOARD THAT THE UNITED STEELWORKERS OF AMERICA AND ITS LOCAL 3390 DESIRED TO REPRESENT THESE DRIVERS IN COLLECTIVE BARGAINING AND, INDEED, PURSUED THIS GOAL AS RECENTLY AS FOUR MONTHS BEFORE THIS APPLICATION FOR CERTIFICATION WAS FILED.

15. IN OUR OPINION, THE PROPER DISPOSITION OF THIS APPLICATION

FOR CERTIFICATION IS TO ORDER A REPRESENTATION VOTE BETWEEN THE APPLICANT AND THE UNITED STEELWORKERS OF AMERICA AND ITS LOCAL 3390.

16. THE BOARD WISHES TO ADD A WORD OF CAUTION, HOWEVER, LEST THIS DECISION BE MISINTERPRETED. IT DOES NOT FOLLOW FROM THE BOARD'S FINDING IN THIS CASE THAT WHENEVER EMPLOYEES, FOR WHOM A TRADE UNION HAS BARGAINING RIGHTS, ARE EXCLUDED FROM THE OPERATION OF A COLLECTIVE AGREEMENT, EITHER EXPRESSLY OR BY IMPLICATION, THAT THE BARGAINING AGENT WOULD NECESSARILY RETAIN THE BARGAINING RIGHTS FOR THE EMPLOYEES SO EXCLUDED. IN EACH CASE WHERE THE ISSUE IS RAISED IT MUST BE DECIDED, AS IT WAS HERE, ON THE BASIS OF ALL THE EVIDENCE PRESENTED TO THE BOARD. REFERENCE IS MADE TO THE EVANS LUMBER AND BUILDERS SUPPLY LIMITED CASE, 58 CLLC ¶ 18,117.

17. HAVING REGARD TO THE REPRESENTATIONS BEFORE THE BOARD, TO THE AGREEMENT OF THE PARTIES AND IN THE CIRCUMSTANCES OF THIS CASE THE BOARD FURTHER FINDS THAT ALL HIGHWAY DRIVERS EMPLOYED AT THE MOUNT DENNIS PLANT OF THE RESPONDENT IN METROPOLITAN TORONTO WHO HAUL STEEL, SAVE AND EXCEPT SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

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20. VOTERS WILL BE GIVEN A CHOICE BETWEEN GENERAL TRUCK DRIVERS UNION LOCAL 938 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA AND THE UNITED STEELWORKERS OF AMERICA AND ITS LOCAL 3390.

21. THE MATTER IS REFERRED TO THE REGISTRAR.

18974-70-R: NURSES' ASSOCIATION MIDDLESEX-LONDON DISTRICT HEALTH UNIT (APPLICANT) V. MIDDLESEX-LONDON DISTRICT HEALTH UNIT (RESPONDENT) V. CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL UNION 101 (INTERVENER) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND J. E. C. ROBINSON, Q.C..

APPEARANCES AT THE HEARING: DONALD F. O. HERSEY, MISS S. MACKENZIE AND MISS K. R. LEWIS FOR THE APPLICANT; DR. DOUGLAS A. HUTCHISON FOR THE RESPONDENT; T. E. ARMSTRONG, F. PYKE, D. COTT AND W. ACTON FOR THE INTERVENER; NO ONE FOR THE GROUP OF EMPLOYEES.

DECISION OF VICE-CHAIRMAN FRANK V. BOSCARIOL AND BOARD MEMBER O. HODGES:
APRIL 8, 1971.

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2. BY DECISION OF THE BOARD DATED FEBRUARY 12, 1968, THE "NURSES' ASSOCIATION MIDDLESEX COUNTY HEALTH UNIT", (HEREINAFTER REFERRED TO AS THE "ORIGINAL" ASSOCIATION) WAS FOUND TO BE A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE ACT AND WAS CERTIFIED TO REPRESENT ALL NURSES OF THE RESPONDENT IN THAT CASE, NAMELY, THE MIDDLESEX COUNTY HEALTH UNIT.

3. BY ORDER-IN-COUNCIL, EFFECTIVE JANUARY 1, 1971, ISSUED UNDER THE PUBLIC HEALTH ACT, THE FORMER MIDDLESEX COUNTY HEALTH UNIT AND THE CITY OF LONDON HEALTH UNIT, WERE AMALGAMATED INTO ONE BOARD KNOWN AS THE MIDDLESEX-LONDON DISTRICT HEALTH UNIT.

4. AT THE HEARING, THE APPLICANT CALLED THE PRESIDENT OF THE "ORIGINAL" ASSOCIATION, MISS MACKENZIE, WHO GAVE EVIDENCE CONCERNING A MEETING HELD ON OCTOBER 5, 1970. THE MINUTES (FILED AS EXHIBIT #1) DISCLOSE THAT TWO MOTIONS WERE PASSED AT THIS TIME. THE FIRST MOTION PURPORTED TO AMEND THE NAME OF THE "ORIGINAL" ASSOCIATION TO THE NAME OF THE APPLICANT. THE SECOND MOTION PURPORTED TO DELETE THE WORDS "BY THE EMPLOYER" FROM ARTICLE III OF THE ORIGINAL CONSTITUTION (FILED AS EXHIBIT #3) WHICH READS AS FOLLOWS:

"MEMBERSHIP IS OPEN TO ALL REGISTERED AND GRADUATE NURSES WHO ARE EMPLOYED BY THE EMPLOYER ON A FULL-TIME OR A PART-TIME BASIS EXCEPT THOSE IN A MANAGERIAL CAPACITY."

5. MISS MACKENZIE'S EVIDENCE FURTHER INDICATES THAT 9 MEMBERS WERE PRESENT AT THE MEETING AND ALL VOTES TO AMEND THE CONSTITUTION WERE UNANIMOUS. THE MINUTES REVEAL THAT ONE MEMBER WAS ABSENT.

6. ARTICLE XIV OF THE CONSTITUTION PROVIDES:

"THIS CONSTITUTION MAY BE AMENDED BY MAJORITY VOTE OF THE MEMBERS PRESENT AT AN ANNUAL OR SPECIAL GENERAL MEETING OF THE NURSES' ASSOCIATION CALLED FOR THAT PURPOSE."

7. UPON CROSS-EXAMINATION, MISS MACKENZIE STATED THAT NOTICE OF THE MEETING WAS GIVEN TO EACH MEMBER NURSE BY PUTTING A MEMO IN EACH OF THEIR MAIL BOXES ADVISING THEM OF THE CALLING OF A MEETING OF THE "ORIGINAL" ASSOCIATION SOME 2 WEEKS HENCE. ALTHOUGH THE MEMO COULD NOT BE PRODUCED AT THE HEARING, IT IS CLEAR THAT IT DID NOT SPECIFICALLY INDICATE THE PARTICULAR PURPOSE FOR CALLING THE MEETING.

8. FURTHER CROSS-EXAMINATION REVEALED THAT AN "INFORMATIONAL" MEETING WAS SUBSEQUENTLY HELD ON OCTOBER 14, 1970, NOTICE (EXHIBIT

#4) OF WHICH WAS SENT TO THE NURSES OF THE FORMER CITY OF LONDON HEALTH UNIT, INVITING THEM "TO JOIN IN THE FORMATION OF A NURSE ASSOCIATION OF THE AMALGAMATED UNITS." BELOW THIS APPEARS THE FOLLOWING:

"SANDRA MACKENZIE
PRESIDENT,
NURSES ASSOCIATION,
MIDDLESEX COUNTY HEALTH UNIT"

NO MINUTES OF THIS MEETING WERE TAKEN.

9. IT IS THE INTERVENER'S POSITION THAT ALTHOUGH IT IS NOT UNUSUAL FOR A TRADE UNION TO CHANGE ITS NAME, IN SO DOING IT MUST FOLLOW THE PROCEDURE ESTABLISHED WITHIN ITS OWN CONSTITUTION (VIZ. ARTICLE XIV). NOT ONLY WAS THERE A PURPORTED CHANGE OF NAME BUT ALSO THERE WAS AN ATTEMPT TO SUBSTANTIALLY AMEND THE MEMBERSHIP PROVISION (ARTICLE III) OF THE CONSTITUTION. THESE CHANGES COULD ONLY BE AFFECTED BY PROPER NOTICE INFORMING THE MEMBERS OF THE PURPOSES OF THE OCTOBER 5TH MEETING. THE FACT THAT ALL MEMBERS ATTENDED EXCEPT ONE DOES NOT CURE THE EVIL SINCE THE RECIPIENTS WERE PRECLUDED FROM GIVING ADVANCE CONSIDERATION TO THE MATTERS. FURTHER, THERE WAS DOUBT AS TO WHETHER THIS MEETING DID ACHIEVE ITS PURPOSE IN VIEW OF THE SUBSEQUENT NOTICE OF THE OCTOBER 14TH MEETING, WHICH SPEAKS OF THE "FORMATION" OF AN AMALGAMATED NURSES ASSOCIATION PLUS THE FACT THAT MISS MACKENZIE IS THEREIN SHOWN AS THE PRESIDENT OF THE ORIGINAL ASSOCIATION.

10. HAVING CAREFULLY REVIEWED THE EVIDENCE IN THIS REGARD, WE FIND THAT THE NOTICE CALLING THE OCTOBER 5TH MEETING DID NOT SPECIFICALLY SET OUT THE PURPOSE FOR WHICH IT WAS CALLED NOR ARE WE SATISFIED THAT ALL THE MEMBER NURSES WERE SO NOTIFIED ORALLY. NEVERTHELESS, IN VIEW OF THE FACT THAT 9 OF THE 10 MEMBERS ATTENDED THE MEETING AT WHICH TIME OBJECTIONS COULD HAVE BEEN RAISED TO THE PROCEEDINGS, WE FIND THAT THEIR UNANIMOUS CONCURRENCE, IN EFFECT, CONSTITUTES A WAIVER OF ANY FORMAL DEFECTS ASSOCIATED WITH THE CALLING OF THE MEETING PURSUANT TO ARTICLE XIV OF THE CONSTITUTION. MOREOVER, THERE IS NO EVIDENCE BEFORE THIS BOARD CONCERNING ANY SUBSEQUENT OBJECTION TO THE PROCEEDINGS VOICED FROM THE LONE ABSENTEE MEMBER.

11. WE THEREFORE FIND THAT THE APPLICANT HAS ESTABLISHED ITS STATUS AS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE ACT, FOR TO FIND OTHERWISE, UNDER THESE PARTICULAR CIRCUMSTANCES, WOULD, IN OUR OPINION, CONSTITUTE AN OVERLY TECHNICAL APPROACH TO THE INTERPRETATION OF UNION CONSTITUTIONS BY THE BOARD.

12. AT THE HEARING OF THIS MATTER, THE PARTIES AGREED THAT THE GEOGRAPHIC AREA ENCOMPASSED BY THE RESPONDENT WAS NOT IN ISSUE.

13. ACCORDINGLY, MR. D. K. AYSLEY, EXAMINER, IS AUTHORIZED TO INQUIRE INTO AND REPORT TO THE BOARD UPON THE APPROPRIATENESS OF THE BARGAINING UNIT, AND MORE PARTICULARLY, WHETHER OR NOT THERE EXISTS A COMMUNITY OF INTEREST BETWEEN THE REGISTERED AND GRADUATE NURSES WITH REMAINDER OF THOSE EMPLOYEES ENCOMPASSED IN THE PROPOSED BARGAINING UNIT.

DECISION OF BOARD MEMBER J. E. C. ROBINSON: APRIL 8, 1971.

1. WHILE I AM IN AGREEMENT WITH THE ULTIMATE DECISION OF THE MAJORITY, I REGRET I AM UNABLE TO ACCEPT THEIR REASONING THEREFORE.

2. MY COLLEAGUES IN THE MAJORITY DECISION ARE OF THE OPINION THAT THE "ORIGINAL" ASSOCIATION FAILED TO COMPLY WITH THE PROVISIONS OF ITS CONSTITUTION IN AMENDING SUCH CONSTITUTION. I AM UNABLE TO AGREE WITH SUCH POSITION.

3. ARTICLE XIV OF THE CONSTITUTION PROVIDES:-

"THIS CONSTITUTION MAY BE AMENDED BY
MAJORITY VOTE OF THE MEMBERS PRESENT
AT AN ANNUAL OR SPECIAL GENERAL MEETING
OF THE NURSES' ASSOCIATION CALLED FOR
THAT PURPOSE."

4. I FOUND THE PRESIDENT OF THE "ORIGINAL" ASSOCIATION, MISS MACKENZIE, TO BE A FORTHRIGHT AND CREDIBLE WITNESS.

5. HER EVIDENCE WAS THAT SHE CALLED A SPECIAL GENERAL MEETING OF THE "NURSES' ASSOCIATION MIDDLESEX COUNTY HEALTH UNIT" FOR THE PURPOSE OF AMENDING THE CONSTITUTION AND BY A MAJORITY VOTE OF THE MEMBERS PRESENT, THE CONSTITUTION WAS SO AMENDED. THIS WAS DONE ON OCTOBER 5, 1970. WHILE THERE IS NO EVIDENCE THAT THE MEMBERS WERE NOTIFIED OF THE PURPOSE OF THE CALLING OF THE SPECIAL GENERAL MEETING, NEITHER IS THERE A REQUIREMENT IN THE CONSTITUTION THAT THE MEMBERS WOULD BE GIVEN SUCH NOTICE.

6. THAT BEING SO, IT IS MY FINDING THAT THE PROVISIONS OF THE CONSTITUTION OF THE "ORIGINAL" ASSOCIATION WERE COMPLIED WITH, AND THE CONSTITUTION OF SUCH ASSOCIATION PROPERLY AMENDED.

7. IT IS THEREFORE UNNECESSARY FOR ME TO COMMENT ON THE QUESTION OF WAIVER, AS DO MY COLLEAGUES, OR ON THE EFFECT OF THE EVENTS WHICH TRANSPIRED SUBSEQUENT TO OCTOBER 5TH, 1970.

18988-70-R: CANADIAN TEXTILE AND CHEMICAL UNION (APPLICANT) v. CANADIAN JOHNS-MANVILLE CO., LIMITED (RESPONDENT) v. INTERNATIONAL CHEMICAL WORKERS UNION LOCAL 346 (INTERVENER).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: R. K. ROWLEY, MADELEINE PARENT AND JOHN BYRNE FOR THE APPLICANT, DONALD J. M. BROWN, ROY F. WINKWORTH, DAVID M. BEATTY AND F. J. FEALEY FOR THE RESPONDENT, R. M. INNES, THOMAS SLOAN AND R. W. STEWART FOR THE INTERVENER.

DECISION OF THE BOARD: APRIL 6, 1971.

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2. THE BOARD FURTHER FINDS THAT THE APPLICANT WAS FORMERLY KNOWN AS CANADIAN TEXTILE COUNCIL AND THAT THE APPLICANT CHANGED ITS NAME TO CANADIAN TEXTILE AND CHEMICAL UNION AT A CONVENTION HELD ON MAY 3 AND 4, 1969.

3. AT THE TIME THIS APPLICATION WAS MADE, THE APPLICANT HAD NOT BEEN CERTIFIED AS A TRADE UNION UNDER ITS NEW NAME ALTHOUGH THE APPLICANT HAD FOR MANY YEARS BEEN RECOGNIZED AS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT UNDER ITS FORMER NAME. THE APPLICANT WAS THEREFORE REQUIRED IN THIS APPLICATION TO ESTABLISH THAT IT IS THE SAME ENTITY AS WAS FORMERLY RECOGNIZED BY THE BOARD AS A TRADE UNION. SINCE THE APPLICANT HAD REQUESTED A PRE-HEARING REPRESENTATION VOTE IN THIS MATTER, THE BOARD POSTED FORM 6, NOTICE TO EMPLOYEES OF APPLICATION AND REQUEST FOR PRE-HEARING VOTE, AND IN THAT NOTICE STATED AS FOLLOWS:

IT APPEARS FROM A CHECK OF THE BOARD'S FILES THAT THE BOARD HAS NOT FOUND IN ANY PREVIOUS PROCEEDING BEFORE IT THAT THE CANADIAN TEXTILE AND CHEMICAL UNION IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT. YOUR ATTENTION IS DIRECTED TO SECTION 78A OF THE LABOUR RELATIONS ACT.

4. WHEN THE ABOVE NOTICE CAME TO THE ATTENTION OF THE APPLICANT, THE APPLICANT IMMEDIATELY OBJECTED AND TOOK THE POSITION THAT IT WAS THE SAME ENTITY THAT HAD BEEN PREVIOUSLY RECOGNIZED BY THE BOARD AS A TRADE UNION. SUBSEQUENTLY, THE REPRESENTATION VOTE WAS HELD AND OF THE 437 PERSONS WHOSE NAMES APPEAR ON THE REVISED VOTERS' LIST, 217 CAST THEIR BALLOT IN FAVOUR OF THE APPLICANT. THE APPLICANT ACCORDINGLY FAILED TO OBTAIN THE SUPPORT OF MORE THAN 50 PER

CENT OF THE PERSONS WHOSE NAMES APPEAR ON THE REVISED VOTERS' LIST.

5. THE APPLICANT OBJECTED TO THE REPRESENTATION VOTE THAT WAS HELD AND TOOK THE POSITION THAT THE STATEMENT CONCERNING THE APPLICANT'S STATUS WAS DAMAGING TO IT AND WOULD TEND TO LEAD THE EMPLOYEES TO SUSPECT THE STATUS OF THE APPLICANT.

6. HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES, THE BOARD FINDS THAT THE CHOICE OF WORDS USED IN THE NOTICE TO THE EMPLOYEES MIGHT TEND TO CAUSE THE EMPLOYEES TO BELIEVE THAT THE APPLICANT HAD NEVER BEEN RECOGNIZED BY THE BOARD AS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT. WHILE IT IS TRUE THAT THE APPLICANT HAD NEVER BEEN RECOGNIZED AS A TRADE UNION UNDER THE NAME THAT IT NOW BEARS, THE APPLICANT IS A CONTINUATION OF THE TRADE UNION THAT WAS FORMERLY KNOWN AS CANADIAN TEXTILE COUNCIL AND IN ITS FORMER NAME THE APPLICANT HAD IN FACT BEEN RECOGNIZED BY THE BOARD AS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT. SINCE THE STATEMENT QUESTIONING THE APPLICANT'S STATUS CONTAINED IN THE NOTICE TO THE EMPLOYEES MIGHT ADVERSELY AFFECT THE APPLICANT IN THE MINDS OF THE EMPLOYEES AND SINCE THIS ADVERSE EFFECT MIGHT HAVE CONTRIBUTED TO THE APPLICANT'S DEFEAT IN THE REPRESENTATION VOTE CONDUCTED IN THIS MATTER, THE BOARD IS OF THE VIEW THAT IT SHOULD TAKE THE NECESSARY STEPS TO ERASE ANY ADVERSE EFFECT SUCH STATEMENT MIGHT HAVE HAD ON THE APPLICANT IN THIS MATTER.

7. THE BOARD IS THEREFORE OF THE VIEW THAT A NEW REPRESENTATION VOTE SHOULD BE TAKEN IN THIS CASE.

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11. THE MATTER IS REFERRED TO THE REGISTRAR.

73-70-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 247 (APPLICANT) v. CANADIAN DREDGE & DOCK LIMITED (RESPONDENT) v. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (INTERVENER #1) v. SEAFARERS' INTERNATIONAL UNION OF CANADA (INTERVENER #2).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: G. MOULTON AND M. REILLY FOR THE APPLICANT; S. G. VOSS FOR THE RESPONDENT; H. A. HERRON FOR INTERVENER #1; P. A. SIGURDSON AND D. SWAIT FOR INTERVENER #2.

DECISION OF THE BOARD: APRIL 22, 1971.

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4. THE APPLICANT SEEKS CERTIFICATION FOR A UNIT OF CONSTRUCTION LABOURERS, SAVE AND EXCEPT NON-WORKING FOREMEN AND ABOVE EMPLOYED BY THE RESPONDENT IN BOARD GEOGRAPHIC AREA # 29.

5. THE WORK PERFORMED BY THE RESPONDENT WAS LOCATED NEAR THE VILLAGE OF BATH IN THE COUNTY OF LENNOX AND ADDINGTON WHICH IS IN GEOGRAPHIC AREA #29 AND CONSISTED OF THE PERFORMANCE OF A SUB-CONTRACT FROM ONTARIO HYDRO TO INSTALL A WATER INTAKE SYSTEM FOR A GENERATING STATION NEAR BATH. THIS WATER INTAKE COMMENCES ON LAND AND REACHES OUT INTO LAKE ONTARIO UP TO A DISTANCE OF APPROXIMATELY 220 FEET. DURING MARCH OF THIS YEAR THE RESPONDENT EMPLOYED THREE CONSTRUCTION LABOURERS TO DRILL AND SHEET A TRENCH FOR THE WATER INTAKE SYSTEM. THIS SUB-CONTRACT WAS PERFORMED BY SITING A LAND DRILL ON THE ICE SURFACE OF LAKE ONTARIO AND USING THE DRILL TO DRILL THROUGH THE SURFACE OF THE ICE INTO THE BED OF THE LAKE. THE DRILL WAS OPERATED BY MEANS OF A SHORE-BASED COMPRESSOR.

6. THE SEAFARERS' INTERNATIONAL UNION OF CANADA (HEREINAFTER CALLED 'SEAFARERS') RAISED TWO ISSUES IN CONNECTION WITH THIS APPLICATION FOR CERTIFICATION. FIRSTLY, THE SEAFARERS ALLEGED THAT THE BOARD HAD NO JURISDICTION TO ENTERTAIN THIS APPLICATION ON THE GROUNDS THAT THE UNDERTAKING INVOLVED IN THIS APPLICATION FOR CERTIFICATION RELATED TO SHIPPING AND NAVIGATION AND THAT THE RESPONDENT WAS A FEDERALLY INCORPORATED COMPANY WHOSE BUSINESS IS USUALLY THAT OF MARITIME CONSTRUCTION, DREDGING, LAYING PIPELINES, DOCK REPAIRS AND DOCK AND HARBOUR IMPROVEMENTS. THE SEAFARERS CONTENDED THAT THE NATURE OF THE WORK PERFORMED BY THE EMPLOYEES AFFECTED BY THIS APPLICATION CAME WITHIN NAVIGATION AND SHIPPING AND ACCORDINGLY WAS NOT WITHIN THE JURISDICTION OF THE BOARD BUT RATHER CAME WITHIN THE JURISDICTION OF THE CANADA LABOUR RELATIONS BOARD. ...

7. WITH RESPECT TO THE FIRST ISSUE, THE BOARD IS OF THE OPINION THAT EVEN ALLOWING FOR THE WIDE CONSTRUCTION USUALLY GIVEN TO THE TERM "NAVIGATION AND SHIPPING" UNDER HEAD 10 OF SECTION 91 OF THE BRITISH NORTH AMERICA ACT - SEE CITY OF MONTREAL V. MONTREAL HARBOUR COMMISSIONERS [1926] A.C. 299, P. 312 AND RE VALIDITY OF INDUSTRIAL RELATIONS & DISPUTES INVESTIGATION ACT AND ITS APPLICABILITY IN RESPECT OF CERTAIN EMPLOYEES OF THE EASTERN CANADA STEVEDORING COMPANY LIMITED CASE, [1955] S.C.R. 529, P. 534-535 - THERE WAS A COMPLETE ABSENCE OF NAVIGATION AND SHIPPING INVOLVED IN THE UNDERTAKING OF THE RESPONDENT HERE UNDER CONSIDERATION. THE QUESTION FOR DECISION, THEREFORE, IS WHETHER THE RESPONDENT'S UNDERTAKING INVOLVED IN THIS APPLICATION FOR CERTIFICATION, IS A SEPARATE UNDERTAKING FROM ITS MAIN BUSINESS OF MARINE CONSTRUCTION, DREDGING, PIPELINES, DOCK REPAIRS AND DOCK AND HARBOUR IMPROVEMENTS. THE COMPANY MAY, OF COURSE, BE AUTHORIZED TO CARRY ON AND MAY IN FACT CARRY ON MORE THAN ONE UN-

DER TAKING. SIMPLY BECAUSE THE RESPONDENT PRINCIPALLY ENGAGES IN UNDERTAKINGS WHICH MAY WELL FALL UNDER THE HEADING OF SHIPPING AND NAVIGATION, IT DOES NOT FOLLOW THAT ALL OF ITS WORKS MUST BE SHIPPING AND NAVIGATION OR THAT ALL ITS ACTIVITIES MUST RELATE TO ITS SHIPPING AND NAVIGATION UNDERTAKING. IN THE PRESENT CASE, CONSIDERING THE NATURE OF THE RESPONDENT'S UNDERTAKING AT BATH AS DISCLOSED BY THE FACTS BEFORE THE BOARD, IT APPEARS TO US THAT THE NAVIGATION AND SHIPPING ACTIVITIES OF THE RESPONDENT WERE INCIDENTAL AND SUBORDINATE TO A TOTALLY DIFFERENT ACTIVITY AND UNDERTAKING, NAMELY, THE LAYING OF A WATER INTAKE SYSTEM FOR ONTARIO HYDRO. THE FEATURES AND OBJECTS OF THIS UNDERTAKING AT BATH ARE ONLY PURELY LOCAL IN NATURE AND ARE WHOLLY WITHIN PROVINCIAL JURISDICTION.

8. COUNSEL FOR THE SEAFARERS RELIED HEAVILY UPON THE R. V. INDUSTRIAL UNION OF MARINE & SHIPPING WORKERS EX PARTE J. P. PORTER Co. CASE, 68 CLLC, ¶ 14,149. HOWEVER, THE FACTS IN THAT CASE ARE QUITE DIFFERENT FROM THE FACTS UNDER CONSIDERATION IN THE INSTANT CASE. IN THE PORTER CASE, SUPRA, THE NOVA SCOTIA SUPREME COURT HELD THAT THE EMPLOYEES WHO OPERATED AND MAINTAINED A REPAIR DEPOT FOR THE SOLE PURPOSE OF SERVICING THEIR EMPLOYER'S FLOATING CRAFT IN THE ATLANTIC AREA WERE EMPLOYED UPON OR IN CONNECTION WITH THE OPERATION OF A WORK, UNDERTAKING OR BUSINESS OPERATED OR CARRIED ON FOR OR IN CONNECTION WITH NAVIGATION AND SHIPPING. THE COURT HELD THAT THE WORK OF THE EMPLOYEES AT THE DEPOT WAS AN INTEGRAL PART OF THE COMPANY'S OPERATION OF ITS SHIPS AND WATER-BORNE ENGINEERING, CONSTRUCTION AND DREDGING PLANT AND CONCLUDED THAT THE LABOUR RELATIONS BOARD OF NOVA SCOTIA HAD NOT ACTED WITHIN ITS JURISDICTION WHEN IT GRANTED CERTIFICATION FOR A BARGAINING UNIT OF THE SAID EMPLOYEES. HAVING REGARD TO THE FOREGOING, THE BOARD FINDS THAT IT HAS JURISDICTION TO ENTERTAIN THIS APPLICATION FOR CERTIFICATION.

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11. THE BOARD FURTHER FINDS THAT ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LENNOX AND ADDINGTON, FRONTENAC AND THE TOWNSHIPS OF REAR OF LEEDS AND LANSDOWNE, FRONT OF LEEDS AND LANSDOWNE, REAR OF YONGE AND ESCOTT, FRONT OF YONGE AND FRONT OF ESCOTT IN THE COUNTY OF LEEDS, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

12. THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT CONSISTED IN PART OF MEMBERSHIP CARDS WHICH BEAR A SIGNATURE ABOVE THE WORDING "MEMBERS SIGNATURE" AND AN INK-STAMPED NAME ABOVE THE WORDING "SECRETARY-TREASURER". THE CARDS INDICATE THE DATE OF ADMISSION, THE LOCAL, MEMBERSHIP NUMBER AND CONTAIN INDICATED SPACES FOR EACH MONTH DURING

THE YEARS OF 1971 AND 1972. IN EACH CASE THE SPACE FOR JANUARY 1971 HAS BEEN INK-STAMPED WITH WHAT APPEARS TO BE THE SYMBOL OF THE LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA.

13. CERTIFICATES OF MEMBERSHIP ARE FREQUENTLY USED BY SOME TRADE UNIONS IN APPLICATIONS TO THE BOARD IN LIEU OF DUES BOOKS SIGNED BY THE MEMBERS WHICH ARE REGARDED BY THE BOARD AS THE BEST PROOF OF MEMBERSHIP IN A TRADE UNION. THE SURRENDER OF DUES BOOKS BY MEMBERS, HOWEVER, FREQUENTLY CAUSES HARDSHIP AND INCONVENIENCE TO THE MEMBER AND HIS TRADE UNION. IT IS FOR THIS REASON THAT THE BOARD HAS ACCEPTED CERTIFICATES OF MEMBERSHIP INSTEAD OF DUES BOOKS. HOWEVER, THE BOARD HAS REQUIRED THAT THESE CERTIFICATES OF MEMBERSHIP CONTAIN STATEMENTS BY THE EMPLOYEE FOR WHOM THE EVIDENCE OF MEMBERSHIP IS SUBMITTED THAT HE IS A MEMBER OF THE TRADE UNION AND THE MONTH AND YEAR FOR WHICH HIS DUES ARE PAID. THESE STATEMENTS MUST BE SIGNED BY THE EMPLOYEE AND MUST ALSO BE CERTIFIED CORRECT BY AN OFFICER OF THE TRADE UNION WHO IS IN A POSITION TO DO SO.

REFERENCE IS MADE TO THE FRANK LICARI & SONS CASE, OLRB M.R. APRIL 1967, P. 57 AND TO THE A. LOVISA MASONRY CONTRACTOR CASE, OLRB M.R. JULY 1970, P. 510.

14. THE MEMBERSHIP CARDS FILED BY THE APPLICANT HAS NOT BEEN CERTIFIED CORRECT BY AN OFFICER OF THE APPLICANT AND DO NOT UNEQUIVOCALLY INDICATE THAT MEMBERSHIP DUES IN ANY GIVEN AMOUNT HAVE BEEN PAID. THESE MEMBERSHIP CARDS DO NOT MEET THE BOARD'S REQUIREMENTS RESPECTING CERTIFICATES OF MEMBERSHIP. HOWEVER, IN ALL THE CIRCUMSTANCES, THE BOARD IS OF THE OPINION THAT THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE IS APPROPRIATE.

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18. THE MATTER IS REFERRED TO THE REGISTRAR.

163-70-R: LABORER'S INTERNATIONAL UNION OF NORTH AMERICA LOCAL 247 (APPLICANT) v. KONVEY CONSTRUCTION COMPANY LIMITED (RESPONDENT).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

DECISION OF THE BOARD: APRIL 2, 1971.

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6. THE APPLICANT HAS SUGGESTED A UNIT OF ALL CONSTRUCTION LABOURERS WORKING FOR THE RESPONDENT IN BOARD GEOGRAPHIC AREA NUMBER 12 FOR COLLECTIVE BARGAINING. BOARD GEOGRAPHIC AREA NUMBER 12 CONSISTS OF:

"PRINCE EDWARD COUNTY AND THE TOWNSHIPS OF LAKE, TUDOR, GRIMSTHORPE, MARMORA, MADOC ELZEVIR, RAWDON, HUNTINGDON, HUNGERFORD, SIDNEY, THURLOW AND TYENDINAGA IN THE COUNTY OF HASTINGS AND THE TOWNSHIPS OF PERCY, SEYMOUR, CRAMAHE, BRIGHTON AND MURRAY IN THE COUNTY OF NORTHUMBERLAND."

THE RESPONDENT IN ITS REPLY HAS SUGGESTED A UNIT OF ALL CONSTRUCTION LABOURERS WORKING FOR THE RESPONDENT IN THE TOWNSHIPS OF LAKE, TUDOR, GRIMSTHORPE, MARMORA, MADOC, ELZEVIR, RAWDON, HUNTINGDON, HUNGERFORD, SIDNEY, THURLOW AND TYENDINAGA IN THE COUNTY OF HASTINGS.

7. IN PARAGRAPH 13 OF ITS REPLY THE RESPONDENT HAS STATED THAT IT HAS HAD TWO OTHER PROJECTS IN THE AREA WHICH THE APPLICANT CLAIMS TO BE APPROPRIATE AND THAT BOTH PROJECTS WERE IN THE COUNTY OF HASTINGS. IN ADDITION, THE RESPONDENT HAS STATED THAT IT HAS NO PENDING JOBS OR CONTRACTS IN THE AREA WHICH THE APPLICANT CLAIMS TO BE APPROPRIATE. IN PARAGRAPH 14(3) OF ITS REPLY THE RESPONDENT HAS REQUESTED A HEARING OF THE APPLICATION BY THE BOARD AND IN SUPPORT OF THIS REQUEST HAS STATED:

- "1. THE RESPONDENT HAS NEVER WORKED ON A PROJECT IN PRINCE EDWARD COUNTY OR IN THE TOWNSHIPS OF PERCY, SEYMOUR, CRAMAHE, BRIGHTON AND MURRAY IN THE COUNTY OF NORTHUMBERLAND.
2. THE RESPONDENT HAS NO PENDING JOBS OR CONTRACTS IN PRINCE EDWARD COUNTY OR IN THE TOWNSHIPS OF PERCY, SEYMOUR, CRAMAHE, BRIGHTON AND MURRAY IN THE COUNTY OF NORTHUMBERLAND.
3. THE RESPONDENT CLAIMS THAT IF THE LABOURER'S INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 247, IS CERTIFIED AS A BARGAINING AGENT FOR THE EMPLOYEES OF THE RESPONDENT, THE APPROPRIATE

GEOGRAPHIC AREA SHOULD BE THE TOWNSHIPS OF LAKE, TUDOR, GRIMSTHORPE, MARMORA, MADOC, ELZEVIR, RAWDON, HUNTINGDON, HUNGERFORD, SIDNEY, THURLOW, AND TYENDINAGA IN THE COUNTY OF HASTINGS.

4. IF THE APPLICANT IS CERTIFIED AS THE BARGAINING AGENT FOR THE EMPLOYEES OF THE RESPONDENT THE RESPONDENT'S SUBMISSIONS WILL BE WITH RESPECT TO THE GEOGRAPHIC EXTENT OF THE AREA THE APPLICANT CONSIDERS APPROPRIATE THE RESPONDENT CONTENTS THAT IT'S PAST, PRESENT, AND FUTURE ACTIVITIES IN THE AREA INDICATE THAT, WITH RESPECT TO THE RESPONDENT, THE AREA SUGGESTED BY THE APPLICANT AS APPROPRIATE IS TOO WIDE."

8. THE FACT THAT THE RESPONDENT HAS NO PENDING JOB IN A PARTICULAR GEOGRAPHIC AREA WITHIN THE PROVINCE OF ONTARIO HAS NEVER BEEN HELD BY THE BOARD, IN APPLICATIONS FOR CERTIFICATION MADE UNDER THE CONSTRUCTION INDUSTRY PROVISIONS OF THE LABOUR RELATIONS ACT TO BE A GROUND FOR DENYING CERTIFICATION TO A TRADE UNION. THE SITUATION WHICH THE RESPONDENT FINDS ITSELF IN IS BY NO MEANS UNCOMMON FOR EMPLOYERS IN THE CONSTRUCTION INDUSTRY. IN APPLICATIONS MADE UNDER THE CONSTRUCTION INDUSTRY PROVISIONS OF THE LABOUR RELATIONS ACT, THE BOARD DETERMINES BARGAINING UNITS OF EMPLOYEES THAT ARE APPROPRIATE FOR COLLECTIVE BARGAINING BY REFERENCE TO A GEOGRAPHIC AREA. REFERENCE IS MADE TO SECTION 92(1) OF THE LABOUR RELATIONS ACT. DURING THE PAST EIGHT AND A HALF YEARS THE BOARD HAS EVOLVED NO FEWER THAN THIRTY-TWO ESTABLISHED GEOGRAPHIC AREAS WHICH COVER MOST OF THE PROVINCE OF ONTARIO.

9. WHEN AN APPLICATION FOR CERTIFICATION IS MADE UNDER THE CONSTRUCTION INDUSTRY PROVISIONS OF THE LABOUR RELATIONS ACT, THE BOARD DETERMINES THE APPROPRIATE BARGAINING UNIT WITH REFERENCE TO THE GEOGRAPHIC AREA IN WHICH THE JOB OR JOBS OF THE RESPONDENT ARE LOCATED. THE JOB SITE WHICH FORMS THE SUBJECT MATTER OF THIS APPLICATION FOR CERTIFICATION IS APPROXIMATELY SIX MILES WEST OF BELLEVILLE IN THE COUNTY OF HASTINGS AND IS SITUATED IN BOARD GEOGRAPHIC AREA NUMBER 12.

10. THE BOARD HAS CONSIDERED THE REPRESENTATIONS OF THE RESPONDENT AND SEES NO REASON FOR DEPARTING FROM ITS USUAL PRACTICE

OF GRANTING A BARGAINING UNIT DEFINED WITH REFERENCE TO GEOGRAPHIC AREA NUMBER 12. HAVING REGARD TO THE FOREGOING, THE BOARD FURTHER FINDS THAT ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN PRINCE EDWARD COUNTY AND THE TOWNSHIPS OF LAKE, TUDOR, GRIMSTHORPE, MARMORA, MADOC, ELZEVIR, RAWDON, HUNTINGDON, HUNGERFORD, SIDNEY, THURLOW AND TYENDINAGA IN THE COUNTY OF HASTINGS AND THE TOWNSHIPS OF PERCY, SEYMOUR, CRAMAHE, BRIGHTON AND MURRAY IN THE COUNTY OF NORTHUMBERLAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

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13. IN THE RESULT, THEREFORE, A CERTIFICATE WILL ISSUE TO THE APPLICANT.

197-70-R: INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) V. CONTINENTAL CAN COMPANY OF CANADA LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND O. HODGES.

APPEARANCES AT THE HEARING: M. INNES AND KENNETH ROGERS FOR THE APPLICANT, W. K. WINKLER AND B. M. DONNELLY FOR THE RESPONDENT, EMER L. PALMER AND LARRY H. KINCH FOR THE OBJECTORS.

DECISION OF THE BOARD: APRIL 13, 1971.

1. THIS IS AN APPLICATION FOR CERTIFICATION.

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3. AT THE HEARING THE PARTIES WERE ADVISED THAT THE COPY OF FORM 8, DECLARATION CONCERNING MEMBERSHIP DOCUMENTS, THAT HAD BEEN FILED BY THE APPLICANT WAS COMPLETE IN EVERY RESPECT EXCEPT THAT IT DID NOT INDICATE IN ITEM 1 THE NUMBER OF PERSONS ON WHOSE BEHALF THE APPLICANT HAD SUBMITTED MEMBERSHIP DOCUMENTS. MR. KENNETH ROGERS, THE REPRESENTATIVE OF THE APPLICANT WHO HAD SIGNED THE FORM, WAS PRESENT AT THE HEARING AND INSERTED THE NUMBER IN THE APPROPRIATE PLACE IN ITEM 1 OF FORM 8. THE APPLICANT FURTHER ADVISED THE BOARD THAT ITS OMISSION HAD BEEN NOTED PRIOR TO THE HEARING AND THE APPLICANT HAD ACCORDINGLY FORWARDED BY REGISTERED MAIL A NEW COPY OF FORM 8 WHICH WAS PROPERLY COMPLETED.

4. AT TEN MINUTES TO 10:00 A.M. ON THE DATE OF THE HEARING, A REGISTERED LETTER WAS RECEIVED FROM THE APPLICANT WHICH ENCLOSED A NEW COPY OF FORM 8 WHICH WAS PROPERLY COMPLETED BY MR. ROGERS AND THIS FORM INDICATED THE NUMBER OF PERSONS ON WHOSE BEHALF THE APPLICANT SUBMITTED MEMBERSHIP DOCUMENTS IN THIS CASE. THE ENVELOPE ENCLOSING THE FORM WAS MAILED TO THE BOARD BY REGISTERED MAIL ON APRIL 8, 1971 AND WAS ACCORDINGLY A TIMELY DECLARATION UNDER THE RULES. THIS INFORMATION WAS NOT AVAILABLE AT THE TIME THE APPLICATION WAS HEARD AND ONLY CAME TO THE BOARD'S ATTENTION AFTER THE HEARING WAS COMPLETED.

5. APART FROM THE TIMELY COPY OF FORM 8 THAT WAS RECEIVED BY REGISTERED MAIL, THE BOARD WAS PREPARED, IN ACCORDANCE WITH ITS USUAL PRACTICE, TO PERMIT THE APPLICANT TO AMEND THE FORM 8 THAT WAS FILED IN THIS CASE AS WAS DONE BY MR. ROGERS AT THE HEARING IN THIS MATTER.

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294-71-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA,
LOCAL UNION 93 (APPLICANT) v. CHARLES NICOL CONSTRUCTION (RESPONDENT).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

DECISION OF THE BOARD: APRIL 23, 1971.

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7. THE RESPONDENT INDICATED IN ITS REPLY THAT IT REQUESTED A HEARING OF THIS APPLICATION FOR CERTIFICATION BY THE BOARD. HOWEVER, THE RESPONDENT FAILED TO INDICATE IN ITS REPLY THE REASON WHY IT WAS REQUESTING A HEARING. THE BOARD CONTACTED THE RESPONDENT AND POINTED OUT THAT IN APPLICATIONS FOR CERTIFICATION FILED UNDER THE CONSTRUCTION INDUSTRY PROVISIONS OF THE ACT, THE BOARD IS NOT REQUIRED TO HOLD A HEARING - REFERENCE IS MADE TO SECTION 75(9A) OF THE LABOUR RELATIONS ACT, AND POINTED OUT THAT IT WAS THE PRACTICE OF THE BOARD TO HOLD SUCH HEARINGS ONLY WHERE A USEFUL PURPOSE WOULD BE SERVED. THE RESPONDENT WAS INFORMED THAT THE BOARD WOULD GRANT IT AN EXTENSION OF TIME IN WHICH TO NOTIFY THE BOARD OF THE REASON WHY IT WAS REQUESTING A HEARING. THE RESPONDENT HAS FAILED TO NOTIFY THE BOARD OF ITS REASONS FOR REQUESTING A HEARING WITHIN THE ADDITIONAL TIME GRANTED BY THE BOARD. ACCORDINGLY, SINCE IN THE OPINION OF THE BOARD NO USEFUL PURPOSE WOULD BE SERVED IN GRANTING THE RESPONDENT'S REQUEST FOR A HEARING IN THIS APPLICATION, THE RESPONDENT'S REQUEST FOR A HEARING IS HEREBY DENIED. IN THE EVENT THAT THE RESPONDENT IS OF THE OPINION THAT THE BOARD HAS ERRED IN SOME MATERIAL RESPECT, IT IS OPEN TO THE RESPONDENT TO REQUEST THE BOARD TO RECONSIDER ITS DECISION UNDER

THE PROVISIONS OF SECTION 79(1) OF THE LABOUR RELATIONS ACT.

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9. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

32-70-R: OUELLETTE & ROCHEFORT LTD. (APPLICANT) V. UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 2486 (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND J.E.C. ROBINSON, Q.C..

APPEARANCES AT THE HEARING: JEAN JACQUES BLAIS AND ANDRE ROCHEFORT FOR THE APPLICANT, P. E. GUERTIN FOR THE RESPONDENT.

DECISION OF J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBER O. HODGES: APRIL 14, 1971.

1. THE APPLICANT APPLIED ON FEBRUARY 19, 1971 UNDER THE PROVISIONS OF SECTION 45 OF THE LABOUR RELATIONS ACT FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT UNION. THE RESPONDENT FILED A REPLY TO THE APPLICATION AND WAS REPRESENTED AT THE HEARING IN THIS MATTER.

2. THE RESPONDENT WAS CERTIFIED AS BARGAINING AGENT FOR CERTAIN EMPLOYEES OF THE APPLICANT ON SEPTEMBER 29, 1966, AND THE PARTIES ENTERED INTO A COLLECTIVE AGREEMENT WHICH WAS TO REMAIN IN EFFECT UNTIL JANUARY 15, 1969.

3. FOLLOWING THE SERVICE OF A NOTICE UNDER SECTION 40 OF THE ACT TO BARGAIN FOR A RENEWAL OF THE COLLECTIVE AGREEMENT, THE PARTIES MET AND BARGAINED. A CONCILIATION OFFICER WAS APPOINTED AND THE MINISTER ADVISED THE PARTIES BY LETTER DATED MARCH 26, 1969 THAT HE DID NOT DEEM IT ADVISABLE TO APPOINT A CONCILIATION BOARD. THERE WAS NO BARGAINING MEETINGS BETWEEN THE PARTIES SINCE SEPTEMBER 1969 AND THE APPLICANT AT NO TIME REFUSED TO BARGAIN WITH THE RESPONDENT.

4. THE APPLICANT ARGUED THAT SINCE THE RESPONDENT HAD ALLOWED MORE THAN SIXTY DAYS TO ELAPSE DURING WHICH IT HAD NOT SOUGHT TO BARGAIN, THE BOARD SHOULD DECLARE THAT THE RESPONDENT NO LONGER REPRESENTS THE EMPLOYEES OF THE APPLICANT IN THE BARGAINING UNIT. IN THE ALTERNATIVE, THE APPLICANT ARGUED THAT SINCE APPROXIMATELY 1 1/2 YEARS HAVE ELAPSED SINCE THE RESPONDENT HAS SOUGHT TO BARGAIN WITH THE APPLICANT, THE BOARD SHOULD FIND THAT THE RESPONDENT HAS ABANDONED ITS BARGAINING RIGHTS AND ACCORDINGLY NO LONGER REPRESENTS THE EMPLOYEES OF THE APPLICANT.

5. THE RESPONDENT ARGUED THAT SINCE A NOTICE TO BARGAIN WAS SERVED UNDER SECTION 40 OF THE ACT AND THE MINISTER HAD APPOINTED A CONCILIATION OFFICER PRIOR TO THE MAKING OF THIS APPLICATION, THE APPLICATION IS ACCORDINGLY UNTIMELY UNDER THE PROVISIONS OF SECTION 45(2) OF THE ACT. THE RESPONDENT OFFERED AN EXPLANATION OF ITS LACK OF DILIGENCE IN PURSUING ITS BARGAINING RIGHTS IN THIS MATTER. WHILE THE RESPONDENT RECOGNIZED THAT IT WAS ENTITLED TO ENGAGE IN A LAWFUL STRIKE SINCE APRIL 1969, IT DID NOT TAKE THIS ACTION BECAUSE IT BELIEVED THAT THE TIME WAS NOT OPPORTUNE. THE APPLICANT'S OPERATIONS IN THE AREA WERE SUCH THAT A RELATIVELY SMALL NUMBER OF EMPLOYEES WERE EMPLOYED AND A STRIKE WOULD ACCORDINGLY NOT HAVE A SUFFICIENT ECONOMIC IMPACT TO CAUSE THE APPLICANT TO SIGN A COLLECTIVE AGREEMENT IN TERMS SIMILAR TO THAT NEGOTIATED WITH OTHER CONTRACTORS IN THE AREA. ALTHOUGH SOME OF THE FIVE OR SIX EMPLOYEES IN THE BARGAINING UNIT WERE MEMBERS OF THE RESPONDENT, THE RESPONDENT DID NOT BELIEVE A STRIKE WOULD ACCOMPLISH ITS PURPOSE AND SINCE THE EMPLOYEES WERE BEING PAID THE SAME WAGES AS WERE PAID BY CONTRACTORS WHO SIGNED THE COLLECTIVE AGREEMENT, THE RESPONDENT'S MEMBERS, ALTHOUGH NOT RECEIVING THE SAME FRINGE BENEFITS, WERE NOT LOSING ANYTHING IN THEIR WEEKLY WAGE. IN ADDITION, THE RESPONDENT ADVISED THE BOARD THAT THE UNION WAS PARTY TO AN ATTEMPT TO PROMOTE PROVINCE-WIDE BARGAINING IN THE CONSTRUCTION INDUSTRY WITH VARIOUS ASSOCIATIONS OF EMPLOYERS. THE RESPONDENT WAS HOPEFUL THAT THERE WOULD BE PROVINCE-WIDE BARGAINING IN THE NEAR FUTURE AND THAT THIS WOULD ENCOURAGE THE APPLICANT TO GO ALONG WITH THE OTHER EMPLOYERS AND ENTER A NEW COLLECTIVE AGREEMENT WITH THE RESPONDENT.

6. THE RELEVANT PORTION OF SECTION 45 OF THE ACT READS AS FOLLOWS:

45(2) WHERE A TRADE UNION THAT HAS GIVEN NOTICE UNDER SECTION 11 OR SECTION 40 OR THAT HAS RECEIVED NOTICE UNDER SECTION 40 FAILS TO COMMENCE TO BARGAIN WITHIN SIXTY DAYS FROM THE GIVING OF NOTICE, OR, AFTER HAVING COMMENCED TO BARGAIN BUT BEFORE THE MINISTER HAS APPOINTED A CONCILIATION OFFICER OR MEDIATOR, ALLOWS A PERIOD OF SIXTY DAYS TO ELAPSE DURING WHICH IT HAS NOT SOUGHT TO BARGAIN, THE BOARD MAY, UPON THE APPLICATION OF THE EMPLOYER OR OF ANY OF THE EMPLOYEES IN THE BARGAINING UNIT AND WITH OR WITHOUT A REPRESENTATION VOTE, DECLARE THAT THE TRADE UNION NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT.

7. IN ARGUMENT, THE APPLICANT RELIED ON THE DECISION OF THE BOARD IN THE JOHN ENTWISTLE CONSTRUCTION LIMITED CASE, OLRB MONTHLY REPORT, JULY 1970, P. 517. IN THAT CASE, HOWEVER, NO APPLICATION FOR CONCILIATION SERVICES HAD BEEN MADE AND THE FACT SITUATION IS ACCORD-

INGLY DISTINGUISHABLE FROM THE FACTS OF THIS CASE.

8. SINCE NOTICE WAS SERVED UNDER SECTION 40 OF THE ACT AND THE MINISTER HAS APPOINTED A CONCILIATION OFFICER IN THIS MATTER PRIOR TO THE MAKING OF THIS APPLICATION, THIS APPLICATION IS ACCORDINGLY UNTIMELY UNDER THE PROVISIONS OF SECTION 45(2) OF THE ACT.

9. ALTHOUGH THE APPLICANT RELIED ON THE PROVISIONS OF SECTION 46 OF THE ACT IN ITS ARGUMENT CONCERNING THE TIMELINESS OF THIS APPLICATION, IT MUST BE NOTED THAT SECTION 45 OF THE ACT IS NOT MADE SUBJECT TO THE PROVISIONS OF SECTION 46 IN THE SAME MANNER AS SECTION 43 OF THE ACT IS MADE SPECIFICALLY "SUBJECT TO SECTION 46". AN APPLICATION FOR TERMINATION BY EMPLOYEES PURSUANT TO SECTION 43 OF THE ACT, IN THE CIRCUMSTANCES OUTLINED ABOVE, WOULD BE A TIMELY APPLICATION UNDER THE PROVISIONS OF SECTION 46 SINCE ALL THE APPLICABLE TIME PERIODS REFERRED TO IN SECTION 46 HAVE BEEN SATISFIED. HOWEVER THAT MAY BE, SINCE THE INSTANT APPLICATION WAS NOT MADE "BEFORE THE MINISTER HAS APPOINTED A CONCILIATION OFFICER" AS REQUIRED BY SECTION 45(2) OF THE ACT, THIS APPLICATION IS UNTIMELY.

10. FOR THE REASONS GIVEN IN ANDRE CONSTRUCTION COMPANY CASE, OLRB MONTHLY REPORT, JULY 1970, P. 512, WE FIND THAT SECTION 46 DOES NOT PROVIDE A SUBSTANTIVE REMEDY BUT IS PROCEDURAL ONLY. WE FURTHER FIND THAT SECTION 46 HAS NO BEARING ON APPLICATIONS FOR TERMINATION OF BARGAINING RIGHTS MADE UNDER SECTION 45 OF THE ACT SINCE THE LEGISLATURE DID NOT MAKE SECTION 45 "SUBJECT TO SECTION 46" AS IT DID IN SECTION 43 AND SECTION 5 OF THE ACT. WE ACCORDINGLY FIND THAT THIS APPLICATION IS UNTIMELY UNDER SECTION 45 OF THE ACT.

11. THERE REMAINS TO BE CONSIDERED THE QUESTION WHETHER THE RESPONDENT HAS ABANDONED ITS BARGAINING RIGHTS. THE QUESTION OF ABANDONMENT IS A FACTUAL ONE WHICH MUST BE DETERMINED ON THE BASIS OF ALL THE AVAILABLE OBJECTIVE EVIDENCE. ON THE ONE HAND, WE HAVE THE FACT THAT THE RESPONDENT HAS PERMITTED APPROXIMATELY 1 1/2 YEARS TO ELAPSE DURING WHICH IT HAS NOT ACTIVELY ATTEMPTED TO PROMOTE THE BARGAINING RELATIONSHIP. AS INDICATED ABOVE, THE RESPONDENT'S EXPLANATION WOULD NOT JUSTIFY THIS DELAY SO AS TO BAR A TIMELY APPLICATION FOR TERMINATION. AT THE VERY MOST, THE RESPONDENT'S EXPLANATION MIGHT CAUSE THE BOARD TO DIRECT A REPRESENTATION VOTE IF THE APPLICATION WAS OTHERWISE TIMELY.

12. HOWEVER, WE ARE NOT CONSIDERING THE RESPONDENT'S EXPLANATION IN THE LIGHT OF A TIMELY APPLICATION FOR TERMINATION OF BARGAINING RIGHTS. THE RESPONDENT'S EXPLANATION OF THE DELAY IS RELATIVE ONLY TO THE QUESTION OF ABANDONMENT. IN VIEW OF THE FACT THAT THERE IS THE EXTRINSIC EVIDENCE OF THE RESPONDENT'S ENDEAVOURS TO PROMOTE PROVINCE-WIDE BARGAINING IN THE CONSTRUCTION INDUSTRY WHICH THE RESPONDENT HOPED WOULD IMPROVE ITS BARGAINING RELATIONSHIP AND BARGAINING POSITION WITH

THE APPLICANT AND IN VIEW OF THE RESPONDENT'S ACTIVE OPPOSITION TO THIS APPLICATION, WE MUST FIND THAT THIS EVIDENCE CREATES SERIOUS DOUBT IN OUR MINDS AS TO THE INTENT OF THE RESPONDENT TO ABANDON ITS BARGAINING RIGHTS IN THIS MATTER. IN REACHING THIS DECISION, WE HAVE HAD PARTICULAR REGARD FOR THE FACT THAT THE TIME PERIOD INVOLVED IN THIS MATTER IS MARGINAL AND WAS NOT NEARLY AS GREAT AS THE TIME PERIOD OF APPROXIMATELY SEVEN YEARS THAT WAS INVOLVED IN THE NORTHERN ENGINEERS & SUPPLY CO. LIMITED CASE, OLRB MONTHLY REPORT, OCTOBER 1968, P. 731, TO WHICH THE BOARD WAS REFERRED BY THE APPLICANT. WE ARE THEREFORE NOT PREPARED TO FIND THAT THE RESPONDENT HAS ABANDONED ITS BARGAINING RIGHTS ON THE EVIDENCE NOW BEFORE US.

13. THIS APPLICATION IS THEREFORE DISMISSED.

DECISION OF BOARD MEMBER J.E.C. ROBINSON, Q.C.: APRIL 14, 1971.

I DISSENT.

I DO AGREE, HOWEVER, WITH THAT PART OF THE MAJORITY DECISION WHICH INDICATES THAT THE QUESTION OF ABANDONMENT IS A FACTUAL ONE. THAT BEING SO, IT WOULD SEEM TO ME THAT THE FACT THAT THE UNION APPEARED AT THE HEARING IS IMMATERIAL, IF THERE HAS, IN FACT, BEEN AN EARLIER ABANDONMENT.

IT IS MY OPINION, AND I WOULD SO FIND, THAT NO OVERT ACT WAS TAKEN BY THE RESPONDENT UNION ON BEHALF OF ITS MEMBERS EMPLOYED BY THE APPLICANT, AND THAT THE RESPONDENT UNION HAD, IN FACT, ABANDONED ITS BARGAINING RIGHTS BY THE TIME THIS APPLICATION WAS MADE. I REGARD THE EXPLANATION BY THE UNION FOR ITS LASSITUDE TO BE LITTLE MORE THAN AN EXCUSE. I WOULD ALSO REJECT THE SUGGESTED TEST PUT FORTH BY THE MAJORITY THAT THE EVIDENCE "CREATES SERIOUS DOUBT IN OUR MINDS AS TO THE INTENT OF THE RESPONDENT TO ABANDON ITS BARGAINING RIGHTS IN THIS MATTER."

IN VIEW OF MY FINDING, IT IS UNNECESSARY FOR ME TO DEAL WITH THE PROVISIONS OF SECTION 45 OF THE LABOUR RELATIONS ACT.

HAVING FOUND ABANDONMENT, I WOULD MERELY TERMINATE THE PROCEEDINGS.

18666-70-U: TORONTO MAILERS' UNION, No. 5 (COMPLAINANT) v. TORONTO STAR LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND O. HODGES.

APPEARANCES AT THE HEARING: IAN SCOTT FOR THE COMPLAINANT, D.J.M. BROWN AND D. M. BEATTY FOR THE RESPONDENT.

DECISION OF THE BOARD: APRIL 21, 1971.

1. THIS IS A COMPLAINT UNDER SECTION 65 OF THE LABOUR RELATIONS ACT WHEREIN THE COMPLAINANT COMPLAINS THAT DAVID FERGUSON WAS DISCHARGED BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF THE LABOUR RELATIONS ACT.

2. THE RESPONDENT HAS TAKEN THE POSITION THAT MR. FERGUSON WAS DISCHARGED FOR CAUSE. THE RESPONDENT ALLEGES THAT "MR. FERGUSON'S EMPLOYMENT WAS TERMINATED BY THE COMPANY FOR INTIMIDATING AND ATTEMPTING TO COERCE AN EMPLOYEE IN THE MAIL ROOM TO SIGN A UNION CARD." IN SUPPORT OF ITS ALLEGATION, THE RESPONDENT CALLED AS A WITNESS MR. C. J. DAVIES, THE RESPONDENT'S MANAGER OF INDUSTRIAL RELATIONS. MR. DAVIES TESTIFIED THAT FOLLOWING A COMPLAINT BY AN EMPLOYEE THAT THE EMPLOYEE HAD BEEN THREATENED BY MR. FERGUSON, MR. FERGUSON WAS SUMMARILY DISCHARGED. WHEN ASKED BY THE BOARD TO GIVE THE NAME OF THE EMPLOYEE WHO HAD INFORMED MR. DAVIES OF THE THREAT, MR. DAVIES STATED THAT THE EMPLOYEE CONCERNED HAD ASKED THAT HIS NAME NOT BE DISCLOSED.

3. AT THIS POINT IN THE HEARING, THE BOARD ENTERTAINED ARGUMENT FROM THE PARTIES AS TO WHETHER OR NOT THE BOARD SHOULD COMPEL MR. DAVIES TO IDENTIFY THE INFORMANT IN THIS CASE.

4. IT WAS THE RESPONDENT'S POSITION THAT THE INFORMANT WAS FEARFUL OF REPRISALS IF HIS NAME WAS DISCLOSED. WHETHER THE CAUSES OF SUCH FEAR ON THE PART OF THE INFORMANT WERE REAL OR IMAGINED, THE RESPONDENT WAS DESIROUS OF PROTECTING THE CONFIDENCE OF THE EMPLOYEE CONCERNED.

5. THE RESPONDENT ALSO TOOK THE POSITION THAT IT WAS NOT THE BOARD'S FUNCTION TO DETERMINE WHETHER FERGUSON HAD ACTUALLY INTIMIDATED OR ATTEMPTED TO COERCE AN EMPLOYEE AS ALLEGED. THE RESPONDENT ARGUED THAT IF THE BOARD WERE SATISFIED THAT THE RESPONDENT DISCHARGED FERGUSON BECAUSE THE RESPONDENT BELIEVED THAT FERGUSON HAD ENGAGED IN SUCH WRONGFUL ACTIVITY, THE COMPLAINANT WOULD THEN ACCORDINGLY HAVE FAILED TO ESTABLISH THE ONUS ON IT OF PROVING THAT FERGUSON WAS DISCHARGED CONTRARY TO THE ACT. THE RESPONDENT ACCORDINGLY ARGUED THAT THE NAME OF THE INFORMANT IS NOT ESSENTIAL TO THE BOARD'S DETERMINATION IN THIS CASE.

6. THE COMPLAINANT ARGUED THAT UNLESS SUCH DISCLOSURE WAS MADE, THE COMPLAINANT WOULD BE UNABLE TO MEET THE ALLEGATIONS MADE WITH RESPECT TO THE CONDUCT OF FERGUSON. WHILE THE COMPLAINANT CALLED EXCELLENT CHARACTER EVIDENCE ON BEHALF OF FERGUSON, THE COMPLAINANT ARGUED THAT IT WAS UNABLE TO DEAL DIRECTLY WITH THE REASONS FOR THE DISMISSAL

OF FERGUSON UNLESS THE NAME OF THE INFORMANT IS DISCLOSED.

7. SECTION 59A OF THE ACT READS AS FOLLOWS:

59A.-(1) NO EMPLOYER, EMPLOYERS' ORGANIZATION OR PERSON ACTING ON BEHALF OF AN EMPLOYER OR EMPLOYERS' ORGANIZATION SHALL,

- (A) REFUSE TO EMPLOY OR CONTINUE TO EMPLOY A PERSON;
- (B) THREATEN DISMISSAL OR OTHERWISE THREATEN A PERSON;
- (C) DISCRIMINATE AGAINST A PERSON IN REGARD TO EMPLOYMENT OR A TERM OR CONDITION OF EMPLOYMENT; OR
- (D) INTIMIDATE OR COERCE OR IMPOSE A PECUNIARY OR OTHER PENALTY ON A PERSON,

BECAUSE OF A BELIEF THAT HE MAY TESTIFY IN A PROCEEDING UNDER THIS ACT OR BECAUSE HE HAS MADE OR IS ABOUT TO MAKE A DISCLOSURE THAT MAY BE REQUIRED OF HIM IN A PROCEEDING UNDER THIS ACT OR BECAUSE HE HAS MADE AN APPLICATION OR FILED A COMPLAINT UNDER THIS ACT OR BECAUSE HE HAS PARTICIPATED OR IS ABOUT TO PARTICIPATE IN A PROCEEDING UNDER THIS ACT.

(2) NO TRADE UNION, COUNCIL OF TRADE UNIONS OR PERSON ACTING ON BEHALF OF A TRADE UNION OR COUNCIL OF TRADE UNIONS SHALL,

- (A) DISCRIMINATE AGAINST A PERSON IN REGARD TO EMPLOYMENT OR A TERM OR CONDITION OF EMPLOYMENT; OR
- (B) INTIMIDATE OR COERCE OR IMPOSE A PECUNIARY OR OTHER PENALTY ON A PERSON,

BECAUSE OF A BELIEF THAT HE MAY TESTIFY IN A PROCEEDING UNDER THIS ACT OR BECAUSE HE HAS MADE OR IS ABOUT TO MAKE A DISCLOSURE THAT MAY BE REQUIRED OF HIM IN A PROCEEDING UNDER THIS ACT OR BECAUSE HE HAS MADE AN APPLICATION OR FILED A COMPLAINT UNDER THIS ACT OR BECAUSE HE HAS PARTICIPATED OR IS ABOUT TO PARTICIPATE IN A PROCEEDING UNDER THIS ACT.

8. IT IS READILY APPARENT FROM THE PROVISIONS OF SECTION 59A THAT THE BOARD MUST BE CONCERNED WITH THE PROTECTION OF PEOPLE WHO MAY BE CALLED TO TESTIFY OR WHO MAKE DISCLOSURES CONCERNING A PROCEEDING BEFORE THE BOARD. SECTION 59A IS INTENDED TO AFFORD PROTECTION TO SUCH PERSONS. IF THE BOARD WERE SATISFIED THAT A UNION ENGAGED IN ACTIVITIES OF THE NATURE COMPLAINED OF BY THE RESPONDENT, SUCH ACTIVITIES WOULD BE FATAL TO ITS APPLICATION FOR CERTIFICATION. THE CRIMINAL CODE ALSO PROVIDES OTHER PROTECTION IN SUCH MATTERS.

9. THE RESPONDENT, HOWEVER, IS NOT CONTENT TO RELY ON THE PROTECTION AFFORDED BY STATUTE BUT WISHES TO FURTHER GUARANTEE THE PROTECTION OF THE INFORMANT BY REFUSING TO DISCLOSE HIS NAME.

10. WHILE THE PARTIES REFERRED TO CERTAIN CASE LAW DEALING WITH THE PUBLICATION OF LIBEL BY PUBLISHERS OF NEWSPAPERS AND MAGAZINES, NOTHING TURNS ON THE FACT THAT THE EMPLOYER IN THIS CASE IS THE PUBLISHER OF A NEWSPAPER. THE ISSUE CONCERNING THE IDENTITY OF THE INFORMANT MUST BE DETERMINED IN THE CONTEXT OF THE LABOUR RELATIONS ACT AND THE EMPLOYER IN THIS MATTER CANNOT BE TREATED DIFFERENTLY THAN ANY OTHER EMPLOYER. OUR CONSIDERATION OF THIS ISSUE CANNOT BE AFFECTED BY THE TYPE OF BUSINESS THE EMPLOYER IS ENGAGED IN.

11. IF THE RESPONDENT IN THIS CASE SATISFIES THE BOARD THAT IT ACTED REASONABLY AND IN GOOD FAITH AND TRULY BELIEVED THAT FERGUSON INTIMIDATED OR ATTEMPTED TO COERCE AN EMPLOYEE TO JOIN THE UNION, THE DISCHARGE WOULD BE FOR JUST CAUSE SINCE IT WOULD NOT BE CONTRARY TO THE PROVISIONS OF THE ACT. FOR THE PURPOSE OF PROCEEDINGS UNDER THE ACT, JUST CAUSE MEANS A CAUSE THAT IS NOT CONTRARY TO THE LABOUR RELATIONS ACT. WE ARE NOT CONSIDERING THE DISCHARGE AS ARBITRATORS INTERPRETING A COLLECTIVE AGREEMENT. OUR ONLY FUNCTION IS TO DETERMINE WHETHER THE COMPLAINANT HAS ESTABLISHED THAT THE DISCHARGE WAS CONTRARY TO THE ACT. THE RESPONDENT IS CORRECT IN ITS POSITION THAT JUST CAUSE FOR DISCHARGE, IN SO FAR AS THE LABOUR RELATIONS ACT IS CONCERNED, DOES NOT NECESSARILY INVOLVE THE PROOF OF THE EXISTENCE OF THE FACTS WHICH THE EMPLOYER BELIEVED TO HAVE HAPPENED. HOWEVER, THE BOARD MUST HAVE BEFORE IT SOME TANGIBLE EVIDENCE UPON WHICH IT CAN MAKE A FINDING THAT THE RESPONDENT ACTED REASONABLY AND IN GOOD FAITH AND TRULY BELIEVED FERGUSON ENGAGED IN THE COERCIVE ACTIVITIES ALLEGED. IF, FOR EXAMPLE, THE INFORMANT WERE TO TESTIFY CONCERNING THE ALLEGED ACTIVITIES OF FERGUSON, THE BOARD WOULD BE ABLE TO ASSESS WHETHER THE RESPONDENT ACTED REASONABLY AND IN GOOD FAITH WHEN IT ACCEPTED SUCH ALLEGATIONS AS FACT.

12. THE EMPLOYER MUST ESTABLISH THAT HE HAD REASONABLE JUSTIFICATION FOR ARRIVING AT THE "BELIEF" ON WHICH HE ACTED. IF THE NAME OF THE INFORMANT IS NOT DISCLOSED, OR IF THE INFORMANT IS NOT CALLED TO TESTIFY CONCERNING THE OCCURRENCES COMPLAINED OF, THEN THE BOARD HAS NO WAY OF ASSESSING WHETHER STATEMENTS MADE BY THE INFORMANT TO

THE RESPONDENT WERE CREDITABLE OR WORTHY OF BELIEF. WITHOUT SUCH EVIDENCE, THE PROBATIVE VALUE OF THE HEARSAY TESTIMONY OF MR. DAVIES MAY BE SUBSTANTIALLY REDUCED, IF NOT TOTALLY DESTROYED.

13. WHILE THE BOARD IN NO WAY INTENDS TO IMPLY THAT THE SITUATION EXISTS IN THIS CASE, THE BOARD RECOGNIZES THAT THE PROCEDURE URGED BY THE RESPONDENT, IF ADOPTED BY THE BOARD, WOULD LEAVE THE DOOR OPEN TO UNSCRUPULOUS EMPLOYERS TO DISCHARGE AN EMPLOYEE AND SIMPLY ARGUE THAT THE EMPLOYEE HAD BEEN DISCHARGED ON THE COMPLAINT OF ANOTHER EMPLOYEE WHO WISHES HIS IDENTITY BE KEPT A SECRET. SIMILARLY, A UNION COULD CHARGE AN EMPLOYER WITH IMPROPER CONDUCT AND GIVE HEARSAY EVIDENCE OF EMPLOYEES WHO ALSO WISH THEIR IDENTITY TO REMAIN A SECRET ON THE GROUNDS THAT THEY FEARED FOR THEIR JOBS. THE DANGER OF ABUSE IN SUCH A PROCEDURE IS SO READILY APPARENT THAT IT NEED NOT BE DEALT WITH IN DETAIL.

14. IN VIEW OF THE STATUTORY PROTECTION AFFORDED TO WITNESSES AND PERSONS MAKING DISCLOSURES IN ANY PROCEEDING BEFORE THE BOARD, AND IN PARTICULAR THE OBVIOUS DANGER OF ABUSE THAT WOULD BE OPEN TO ALL PARTIES IF THE BOARD WERE TO ADOPT THE PROCEDURE ADVANCED BY THE RESPONDENT, THE BOARD FINDS THAT IT IS NOT PREPARED TO SANCTION THE PROCEDURES SUGGESTED BY THE RESPONDENT IN THIS CASE.

15. IN ACCORDANCE WITH THE PROVISIONS OF SECTION 75(9) OF THE ACT, THE BOARD IS PREPARED TO GIVE FULL OPPORTUNITY TO MR. DAVIES TO TESTIFY CONCERNING ANY MATTER THAT IS RELEVANT TO THE ISSUES IN THIS CASE. IT MUST BE POINTED OUT, HOWEVER, THAT THE PROBATIVE VALUE OF HIS EVIDENCE CONCERNING THE REASONS FOR THE DISCHARGE OF FERGUSON MAY BE SERIOUSLY LIMITED IF HE REFUSES TO IDENTIFY THE INFORMANT.

16. THE REGISTRAR IS DIRECTED TO LIST THIS MATTER FOR CONTINUATION OF HEARING ON ALL OUTSTANDING ISSUES.

18922-70-U: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (COMPLAINANT) V. NICKLESON TOOL AND DIE COMPANY LIMITED (RESPONDENT).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND J. D. BELL.

APPEARANCES AT THE HEARING: ROBERT WHITE, MARIO S. DI MAIO AND JAMES HOGAN FOR THE COMPLAINANT; JOHN W. WHITESIDE, WILLIAM NICKLESON, L. MENARD AND P. BELLA FOR THE RESPONDENT.

DECISION OF VICE-CHAIRMAN FRANK V. BOSCARIOL AND BOARD MEMBER J. D. BELL:
APRIL 5, 1971.

1. THIS IS A COMPLAINT FOR RELIEF UNDER SECTION 65 OF THE ACT IN WHICH THE COMPLAINANT ALLEGES THAT BRIAN RIVAIT WAS DISCHARGED BY THE RESPONDENT FOR UNION ACTIVITY ON OR ABOUT JANUARY 8, 1971, CONTRARY TO SECTION 50 OF THE ACT.

2. AT THE COMMENCEMENT OF PROCEEDINGS IN THIS MATTER, IT WAS AGREED BY BOTH PARTIES THAT THE APPLICANT HAD APPLIED FOR CERTIFICATION ON AUGUST 14, 1970 AND WAS SUBSEQUENTLY CERTIFIED BY THE BOARD ON SEPTEMBER 1, 1970.

3. THE EVIDENCE OF MR. RIVAIT, THE AGGRIEVED PERSON, DISCLOSES THAT HE COMMENCED EMPLOYMENT WITH THE RESPONDENT IN JULY OF 1966 IN THE CAPACITY OF AN APPRENTICE IN THE TOOL AND DIE TRADE. HE FURTHER STATED THAT HIS APPRENTICESHIP WAS COMPLETED BY JULY OF 1970, AT WHICH POINT, IN HIS OPINION, HE BECAME A TOOLMAKER. HIS RELATIONSHIP WITH THE RESPONDENT AT THIS TIME WAS EXCELLENT AND TO THIS END WAS ASSIGNED TO WORK ON THE MACHINES IN THE PLANT TOGETHER WITH OUTSIDE WORK PERFORMED ON THE PREMISES OF THE RESPONDENT'S CUSTOMERS. IN THIS CONNECTION, IT WOULD APPEAR THAT MR. RIVAIT WAS BEING GROOMED AS A POSSIBLE "BACK-UP" TO MR. DALTON, THE SERVICE MAN, WHO WAS THE HIGHEST RATED EMPLOYEE IN THE SHOP.

4. THE WITNESS FURTHER TESTIFIED THAT HE TOOK NO ACTIVE ROLE IN THE APPLICANT'S ORGANIZATIONAL CAMPAIGN AND ONLY SIGNED A MEMBERSHIP CARD SHORTLY BEFORE IT WAS CERTIFIED.

5. FOLLOWING CERTIFICATION, THE WITNESS STATED THAT HE WAS ELECTED COMMITTEEMAN AND AS A MEMBER OF THE NEGOTIATING COMMITTEE, PARTICIPATED IN THE BARGAINING SESSIONS WITH THE RESPONDENT. IT WAS AT THIS POINT, HE ALLEGED, THAT HIS WORKING CONDITIONS CHANGED WHEREBY HE WAS TAKEN OFF THE MACHINES, HIS SERVICE CALLS WERE ENDED AND HE WAS GIVEN INSTEAD, "DIRTY" JOBS IN THE PLANT. HE ALSO COMPLAINED ABOUT VARIOUS CONVERSATIONS HE HAD WITH MR. MENARD, THE PLANT SUPERINTENDENT, AT THE LATTER'S INSTIGATION, CONCERNING THE ACTIVITIES OF THE APPLICANT IN THE PLANT, DESPITE A GROUND RULE ESTABLISHED AT THE FIRST NEGOTIATING MEETING LIMITING ANY SUCH DISCUSSION TO THE NEGOTIATING TABLE. IT WAS ALSO ALLEGED THAT MR. MENARD, DURING THESE CONVERSATIONS, HAD INDICATED THAT MR. RIVAIT HAD LOWERED HIS CHANCES FOR PROMOTION IN JOINING THE APPLICANT. FURTHER FRICTION DEVELOPED BETWEEN THEM ON DECEMBER 18, 1970, WHEN THE SECOND SHIFT WAS CANCELLED DUE TO A MISUNDERSTANDING AS TO THE LENGTH OF TIME MR. RIVAIT HAD AGREED TO SPEND ON THIS SHIFT.

6. THE WITNESS FURTHER TESTIFIED THAT HE WAS "LET GO" ON FRIDAY, JANUARY 8, 1971, BY THE FOREMAN, MR. PELLA. UPON QUESTIONING THE LATTER AS TO WHETHER THIS ACTION WAS BECAUSE OF THE UNION, THE FOREMAN BECAME NON-COMMITTAL AND REPLIED THAT HE DID NOT WISH TO BECOME INVOLVED. MR. RIVAIT, IN CONCLUDING HIS TESTIMONY, STATED

THAT AT THIS TIME EMPLOYEES WITH LESS "SENIORITY" WERE RETAINED AT WORK ON JOBS HE COULD PERFORM.

7. THE EVIDENCE OF MR. MENARD, THE PLANT MANAGER, DISCLOSES THAT HE FOUND MR. RIVAIT TO BE A HIGHLY SKILLED EMPLOYEE IN WHOM HE SAW THE POTENTIAL OF HIS BECOMING A VALUABLE EMPLOYEE IN THE MACHINE TOOL BUILDING AREA.

8. HE FURTHER STATED THAT COINCIDENTAL WITH RECEIPT OF THE NOTICE OF APPLICATION FOR CERTIFICATION ABOUT MID-AUGUST, THE WORK SITUATION WAS DEPLETING RAPIDLY SUCH THAT A SEVERE CUTBACK OF PERSONNEL WAS IMMINENT. TO THIS END, LEGAL ADVICE WAS SOUGHT WHICH CULMINATED IN A LIST (FILED AS EXHIBIT #1) SHOWING THE NAMES OF THE EMPLOYEES TOGETHER WITH THEIR "SENIORITY", CLASSIFICATION AND RATE OF PAY. HE STATED THAT AFTER AUGUST 28, 1970, A SYSTEM OF LAY-OFF WAS ADOPTED WHEREBY THE JUNIOR MAN, SUBJECT TO CERTAIN EXCEPTIONS, WOULD BE THE FIRST TO BE LAID OFF WITHIN HIS CLASSIFICATION UPON CONSIDERING THE WORK LOAD IN HIS PARTICULAR CLASSIFICATION. IN THIS CONNECTION, HE IDENTIFIED A DOCUMENT, (EXHIBIT #3), SUMMARIZING SUCH LAY-OFFS WHICH HAD TAKEN PLACE UP TO FEBRUARY 11, 1971.

9. IN THE COURSE OF GIVING HIS EVIDENCE, MR. MENARD ALSO IDENTIFIED THE "SCHEDULE A" DOCUMENT (EXHIBIT #2) FILED IN THE CERTIFICATION PROCEEDINGS BEFORE THIS BOARD, WHICH CLASSIFIES MR. RIVAIT AS AN IMPROVER. HE ALSO IDENTIFIED ANOTHER DOCUMENT (EXHIBIT #4) PREPARED SHORTLY AFTER OBTAINING LEGAL ADVICE WHICH AGAIN LISTED MR. RIVAIT AS AN IMPROVER. DESPITE CERTAIN INCONSISTENCIES IN THE DESCRIPTIONS OF OTHER CLASSIFICATIONS, AS ELICITED FROM MR. MENARD UPON CROSS-EXAMINATION, WE ARE SATISFIED THAT, AT LEAST AS FAR AS THE RESPONDENT WAS CONCERNED, MR. RIVAIT'S CLASSIFICATION WAS THAT OF IMPROVER. HOWEVER, WE ARE ALSO SATISFIED THAT SUCH CLASSIFICATION WAS NEVER AGREED TO BY THE APPLICANT WHICH HAS CONSISTENTLY MAINTAINED THAT AT ALL RELEVANT TIMES, HIS PROPER CLASSIFICATION WAS THAT OF TOOL-MAKER.

10. UPON A CAREFUL CONSIDERATION OF ALL THE EVIDENCE IN THIS REGARD, WE FIND THAT ON JANUARY 8, 1971, MR. RIVAIT WAS THE JUNIOR EMPLOYEE IN THE IMPROVER GROUP, A CLASSIFICATION UNILATERALLY ASSIGNED TO HIM BY THE RESPONDENT. WE FURTHER FIND THAT MR. RIVAIT WAS LAID OFF ON THIS DATE PURSUANT TO THE LAY-OFF PROCEDURE INITIALLY PUT INTO EFFECT BY THE RESPONDENT ON AUGUST 28, 1970. IN THIS CONNECTION WE ARE NOT UNMINDFUL OF THE REPRESENTATIONS MADE BY THE RESPONDENT TO THE EFFECT THAT MR. RIVAIT WILL BE RECALLED IN KEEPING WITH HIS "SENIORITY" WITHIN THE IMPROVER CLASSIFICATION. IN SO FINDING, WE DO NOT WISH TO BE TAKEN AS CONDONING THE ACTIONS OF MR. MENARD, IN DRAWING MR. RIVAIT INTO EX CAMERA CONVERSATIONS CONCERNING THE UNION, WHICH CONSTITUTED A DIRECT VIOLATION OF THE UNDERTAKING GIVEN AT THE COMMENCEMENT OF NEGOTIATIONS BETWEEN THE PARTIES.

11. WE THEREFORE FIND THAT THE COMPLAINANT HAS FAILED TO ESTABLISH ON THE BALANCE OF PROBABILITIES THAT MR. RIVAIT WAS DEALT WITH BY THE RESPONDENT CONTRARY TO SECTION 50 OF THE ACT AND ACCORDINGLY THIS COMPLAINT IS DISMISSED.

DECISION OF BOARD MEMBER O. HODGES: APRIL 5, 1971.

1. I DISSENT.

2. BRIAN RIVAIT TESTIFIED THAT HE WAS ONE OF THE LAST TO LEARN ABOUT THE UNION BECAUSE "THE OTHER GUYS WOULDN'T TRUST ME" SINCE IT WAS APPARENT FROM HIS TREATMENT BY THE COMPANY THAT "I WAS FAVOURED." HE JOINED THE UNION JUST BEFORE IT WAS CERTIFIED THAT "I THEN TALKED TO THE FELLOWS."

3. THE UNION WAS CERTIFIED 1 SEPTEMBER, 1970, AND RIVAIT WAS ELECTED A COMMITTEEMAN AND MEMBER OF THE NEGOTIATING COMMITTEE OF THE UNION. AFTER HIS ELECTION CONDITIONS OF WORK FOR HIM "CHANGED FROM DAY TO NIGHT." HE HAD BEEN GOING OUT ON SERVICE CALLS SINCE 1968 WHILE STILL IN HIS APPRENTICESHIP, AN OPPORTUNITY NOT GIVEN TO OTHER APPRENTICES. HE WENT OUT MORE THAN ONCE A MONTH ON THIS WORK, SOMETIMES ALONE, WHENEVER THERE WAS A SERVICE CALL. THERE WERE NEVER ANY COMPLAINTS CONCERNING HIS WORK. HOWEVER, SINCE CERTIFICATION OF THE UNION HE HAS NOT BEEN ON A SERVICE CALL.

4. AFTER CERTIFICATION THE WITNESS WAS PERIODICALLY WATCHED BY PLANT MANAGER MENARD, WHO STOOD BEHIND THE WITNESS FROM TIME TO TIME AT WORK, AND SOMETIMES ENGAGED HIM IN CONVERSATION ABOUT THE DEMANDS OF THE UNION, DISCUSSIONS WHICH THE WITNESS SOUGHT TO AVOID. MENARD AT THESE TIMES "GOT MAD" AND ONCE SAID, "YOU GUYS TOOK ME BY SURPRISE - BUT I CAN'T FIGHT IT NOW." MENARD ALSO TRIED DURING THESE DISCUSSIONS TO DISCOURAGE RIVAIT FROM HIS UNION ACTIVITY - SAYING THAT PROMOTIONS WOULD NOT BE ALLOWED BY THE UNION.

5. RIVAIT WAS PLACED IN CHARGE OF A NEW SECOND SHIFT THAT WAS ESTABLISHED BY AGREEMENT WITH THE UNION COMMITTEE OF THREE MEN AND STARTED TWO WEEKS BEFORE CHRISTMAS. THE SECOND SHIFT WAS IMPLEMENTED SO THAT THE COMPANY COULD ACCEPT A NEW JOB, AND TOO, SO MORE OTHER JOBS COULD BE TAKEN. RIVAIT AGREED TO A TWO-WEEK STINT, BUT WAS REFUSED RELIEF, WHEREUPON THE NIGHT SHIFT WAS CANCELLED AND THE WORK FARMED OUT. SUPERINTENDENT MENARD REFUSED TO MEET THE COMMITTEE TO REVIEW THE AGREEMENT UNDER WHICH THE NIGHT SHIFT HAD BEEN AGREED UPON, AND BLAMED RIVAIT'S DESIRE TO GO BACK ON DAYS FOR CANCELLING THE DOUBLE SHIFT. MENARD TOLD MIKE ROBIBSON, WHO HAD BEEN CALLED BACK FROM LAY-OFF, TO WORK NIGHTS, THAT HE WAS AGAIN LAID OFF "DUE TO HELP OF BRIAN." MENARD ALSO SAID, "AFTER NEW YEAR WHEN WE GET CONTRACT AND I APPOINT A NIGHT SHIFT, WORK IT OR GET OUT THE DOOR."

HE ALSO SAID, "YOU CAN COUNT ON MORE LAY-OFFS AFTER THE NEW YEAR."

6. ON 8 JANUARY, 1971, RIVAIT WAS "LAID OFF" ALTHOUGH HE HAD WORK TO DO AND OTHER JOBS HAD BEEN PROMISED. HOWEVER, THE FOREMAN DID NOT AT FIRST TELL RIVAIT THAT HE WAS LAID OFF. THE FOREMAN SAID, "I HAVE TO LET YOU GO," AND WHEN ASKED THE REASON, SAID, "I DON'T KNOW WHY." ASKED THEN IF IT WAS BECAUSE OF THE UNION, HE ANSWERED, "WELL, WE BOTH KNOW WHY YOU ARE GETTING LAID OFF - BUT I DON'T WANT TO GET INVOLVED," A STATEMENT HE REPEATED TO ANOTHER COMMITTEEMAN AT THE SAME TIME. FIVE MINUTES LATER THE OFFICE GIRL BROUGHT RIVAIT HIS U.I.C. BOOK AND HIS PAY. THERE WERE FIVE OTHERS IN THE SHOP WITH LESS SERVICE AND ABILITY AT THAT TIME WHO WERE NOT LAID OFF:

ANOTHER TOOLMAKER,
3 APPRENTICES, AND
A SWEEPER.

RIVAIT WAS NOT OFFERED ANY OF THESE JOBS. THERE IS, AS WELL, THE TESTIMONY OF RIVAIT ELICITED IN CROSS-EXAMINATION, THAT THE SERVICE WORK HE CUSTOMARILY HAD BEEN GIVEN WAS, AFTER 1 SEPTEMBER, GIVEN TO SERVICEMANN A. DALTON, TOOLMAKER R. CROSBY, TOOL-HYDRAULICS FRANK PAVICIC AND TRAINEE YOUNG CHARLIE NICKLESON.

7. RIVAIT AND THE UNION HAD NOT ACCEPTED THE SYSTEM OF LAY-OFF UNILATERALLY ADOPTED AND IMPOSED BY THE COMPANY OR THE CLASSIFICATION OF 'IMPROVER' ATTACHED TO RIVAIT. RIVAIT HAD COMPLETED HIS APPRENTICESHIP, AND WOULD NORMALLY BE CLASSIFIED AS A TOOL AND DIE MAKER.

THE TESTIMONY OF THE WITNESS WAS GIVEN IN A REASONABLE AND COHERENT MANNER. HE WAS UNSHAKEN BY A SKILFUL AND THOROUGH CROSS-EXAMINATION BY EXPERIENCED COUNSEL.

8. PLANT MANAGER LINESS B. MENARD TESTIFIED RIVAIT WAS "A VERY HIGHLY SKILLED INDIVIDUAL - VERY, VERY VALUABLE IN TOOL BUILDING, FOR THE FUTURE." HE SAID, "I MAKE THE DECISIONS ON LAY-OFFS." WHEN TESTIFYING AS TO THE CANCELLATION OF THE NIGHT SHIFT, THE WITNESS SAID, "WE JOBBED OUT WORK TO GET IT DONE - EXCHANGED RAW CASTINGS FOR FINISHED CASTINGS WITH ANOTHER PLANT." WITH RESPECT TO THE FUTURE OF RIVAIT, MENARD SAID THAT SUBSEQUENT TO 1 SEPTEMBER HE WAS PLEASED WITH HIM AND THERE WERE PLANS FOR ELEVATING HIM TO SERVICEMAN OR ASSISTANT SERVICEMAN AND EVEN OFFERED HIM A JOB AS NIGHT FOREMAN. THE EVIDENCE OF MENARD ESTABLISHED THAT HIS TRADE WAS TOOL AND DIE MAKER. HE ADMITTED IN CROSS-EXAMINATION THAT THERE WAS NO SUCH CLASSIFICATION AS "IMPROVER" IN THE TOOL AND DIE APPRENTICESHIP PROGRAM; GRADUATES WERE CLASSIFIED AS TOOL AND DIE MAKERS, ACCORDING TO THE PROGRAM. HE ADMITTED RIVAIT COULD DO THE JOBS OF;

TRAINEE	-	A. SERRAN,	Hired	APRIL 20, 1969,
TRAINEE	-	D. NESPOLON,	"	FEBRUARY 8, 1969,
TRAINEE	-	C. NICKLESON,	"	JUNE 13, 1969,
SWEeper	-	N. ROSIC,	"	MAY 6, 1968.

9. THE EVIDENCE IS THAT NO COLLECTIVE AGREEMENT AS TO THE PROCEDURES TO BE FOLLOWED IN REDUNDANCY WAS MADE, AND, BEING IMPRESSED WITH THE VERY HIGH REGARD WITH WHICH THE COMPANY VIEWS RIVAIT AS A PRESENT AND FUTURE EMPLOYEE OF VERY GREAT VALUE TO THE FIRM, AND RECOGNIZING HIS QUALITIES OF RESPONSIBILITY AND LEADERSHIP, AS DEMONSTRATED BY THE TESTIMONY OF PLANT MANAGER MENARD, I CAN ONLY FIND THAT HIS SEPARATION FROM EMPLOYMENT WAS MOTIVATED BY OTHER THAN CUSTOMARY BUSINESS PRACTICE THAT WOULD BE TO THE OBVIOUS ADVANTAGE OF THE COMPANY IN THESE CIRCUMSTANCES, I.E. THE RETENTION OF SUCH AN EMPLOYEE AS RIVAIT.

10. THIS VIEW IS STRONGLY SUPPORTED BY THE FAILURE OF THE COMPANY TO OFFER RIVAIT THE OTHER WORK THAT WAS BEING DONE BY JUNIOR EMPLOYEES WHO WERE NOT LAID OFF. THERE IS THE OBVIOUS CASE OF THE JANITOR, ROSIC, WHO IS JUNIOR TO RIVAIT, ALTHOUGH A SENIOR TRUCK DRIVER IS LET GO IN THAT "GENERAL GROUP", BECAUSE HE IS TOO LIGHT FOR THE JOB OF SWEEPING. RIVAIT, HOWEVER, APPEARS TO BE ABOUT 6' 2" AND 225 POUNDS - AND WOULD HAVE NO PROBLEMS WITH SUCH A JOB.

11. THE RIGID ADHERENCE TO THE UNILATERAL GUIDE TO LAY-OFF RECOMMENDED BY THE COMPANY SOLICITOR HAS DUBIOUS VALUE AS A DEFENCE IN VIEW OF THE EXCEPTIONS MADE TO IT, WHICH, IN MY OPINION, WOULD NORMALLY HAVE BEEN EXTENDED TO INCLUDE RIVAIT, HAD HE NOT BEEN A UNION COMMITTEEMAN. OBVIOUSLY A MAN OF LEADERSHIP STATURE WITH A VERY KEEN INSIGHT INTO THE OPERATIONS OF THE SHOP, THE COMPANY PREFERRED HIM ELSEWHERE THAN ON THE NEGOTIATING COMMITTEE.

12. MY FINDING, THEREFORE, IS THAT RIVAIT WAS LAID OFF CONTRARY TO SECTION 50(A) OF THE ACT, AND THAT HE BE COMPENSATED FOR LOSS OF EARNINGS TO THE DATE OF HEARING AT THE RATE HE WAS BEING PAID ON JANUARY 8, 1971, AND THAT HE BE THE FIRST TO BE RECALLED FOLLOWING THE DATE OF THE BOARD'S DECISION, WHEN THE WORK NORMALLY PERFORMED BY HIM PRIOR TO SEPTEMBER 1, 1970, IS REQUIRED.

18786-70-M: RETAIL CLERKS UNION LOCALS No. 206 AND 486 (APPLICANTS) v. SUPER CITY DISCOUNT FOODS LIMITED AND LOBLAW GROCETERIAS CO., LIMITED AND UNION OF CANADIAN RETAIL EMPLOYEES (RESPONDENTS).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS P. J. O'KEEFFE AND J.E.C. ROBINSON, Q.C..

DECISION OF THE BOARD: APRIL 2, 1971.

1. THIS IS AN APPLICATION UNDER SECTION 47A OF THE LABOUR RELATIONS ACT WHEREIN THE BOARD DIRECTED THAT A REPRESENTATION VOTE BE TAKEN IN VOTING CONSTITUENCY #1 AS DEFINED IN THE BOARD'S DECISION OF JANUARY 14, 1971 AND IN VOTING CONSTITUENCY #2 AS DEFINED IN THAT DECISION.
2. ON THE TAKING OF THE REPRESENTATION VOTE DIRECTED BY THE BOARD FIFTY PER CENT OF THE BALLOTS OF ALL THOSE ELIGIBLE TO VOTE WERE CAST IN FAVOUR OF THE APPLICANTS AND FIFTY PER CENT OF THE BALLOTS OF ALL THOSE ELIGIBLE TO VOTE WERE CAST IN FAVOUR OF UNION OF CANADIAN RETAIL EMPLOYEES IN VOTING CONSTITUENCY #1.
3. COUNSEL FOR THE UNION OF CANADIAN RETAIL EMPLOYEES, BY LETTER DATED MARCH 18, 1971, HAS SUBMITTED THAT THE BOARD SHOULD DISMISS THE APPLICATION OF THE APPLICANTS IN THIS MATTER IN VIEW OF THE FACT THAT THE APPLICATIONS FAILED TO OBTAIN MORE THAN FIFTY PER CENT OF THE BALLOTS OF ALL THOSE ELIGIBLE TO VOTE IN VOTING CONSTITUENCY #1.
4. IN APPLICATIONS UNDER SECTION 47A OF THE ACT NOTHING TURNS ON THE FACT THAT ONE UNION OR ANOTHER MAY BE NAMED AS APPLICANT. UNDER SECTION 47A OF THE ACT UNIONS MAY FILE JOINT APPLICATIONS, THE EMPLOYER MAY BE THE APPLICANT OR, AS IN THE INSTANT CASE, ONE UNION MAY BE THE APPLICANT AND THE OTHER UNION MAY BE THE INTERVENER. THE PURPOSE OF HOLDING A REPRESENTATION VOTE WHERE THE BOARD FINDS THAT THE EMPLOYEES OF TWO OR MORE BARGAINING UNITS HAVE BEEN INTERMINGLED IS TO ASCERTAIN THE WISHES OF THE EMPLOYEES IN ORDER TO DETERMINE WHICH TRADE UNION HAS THE RIGHT TO REPRESENT SUCH EMPLOYEES.
5. IN THE INSTANT CASE, SINCE ALL THE EMPLOYEES HAVE CAST THEIR BALLOTS AND THE RESULT IS A TIE BETWEEN THE TWO COMPETING UNIONS, THE RESULTS OF THE REPRESENTATION VOTE ARE INCONCLUSIVE. THE BOARD ACCORDINGLY HAS NOT OBTAINED THE NECESSARY EVIDENCE TO DETERMINE WHICH TRADE UNION SHOULD BE DECLARED TO BE THE BARGAINING AGENT OF THE EMPLOYEES.
6. IT IS NOTED THAT SECTION 47A(7) PROVIDES THAT THE BOARD "MAY HOLD SUCH REPRESENTATION VOTES, AS IT DEEMS APPROPRIATE". WE THEREFORE FIND THAT THE PROVISIONS OF SECTION 47A(7) ARE WIDE ENOUGH TO PERMIT THE BOARD TO DIRECT A NEW REPRESENTATION VOTE. WE THEREFORE ARE OF OPINION THAT IN THE CIRCUMSTANCES OF THIS CASE A NEW REPRESENTATION VOTE SHOULD BE DIRECTED.
7. THE BOARD THEREFORE DIRECTS THAT A NEW REPRESENTATION VOTE BE TAKEN OF THE EMPLOYEES OF LOBLAW GROCETERIAS Co., LIMITED IN THE FOLLOWING VOTING CONSTITUENCY:

ALL FULL-TIME EMPLOYEES OF LOBLAW GROCETERIAS
Co., LIMITED AT 2433 PRINCESS STREET, KINGSTON,

SAVE AND EXCEPT STORE MANAGERS, PERSONS ABOVE THE RANK OF STORE MANAGER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD (HEREINAFTER CALLED VOTING CONSTITUENCY #1)

8. ALL EMPLOYEES OF LOBLAW GROCETERIAS Co., LIMITED IN VOTING CONSTITUENCY #1 ON THE DATE HEREOF WHO HAVE NOT VOLUNTARILY TERMINATED THEIR EMPLOYMENT OR WHO HAVE NOT BEEN DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.
9. VOTERS WILL BE GIVEN A CHOICE BETWEEN THE APPLICANTS AND THE UNION OF CANADIAN RETAIL EMPLOYEES.
10. THE MATTER IS REFERRED TO THE REGISTRAR.

18647-70-M: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. AGILIS CORPORATION LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

DECISION OF J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBER R. W. TEAGLE: APRIL 6, 1971.

1. THIS IS AN APPLICATION UNDER SECTION 79(2) OF THE LABOUR RELATIONS ACT WHEREIN THE BOARD HAS BEEN REQUESTED TO DETERMINE WHETHER HENRY SCHLUETER, EDWARD SPENCER, MIKE KOLPEAN AND RAY GUTHRIE ARE EMPLOYEES OF THE RESPONDENT FOR THE PURPOSE OF THE ACT. FOLLOWING THE APPOINTMENT OF THE EXAMINER, THE PARTIES AGREED THAT THE TESTIMONY OF HENRY SCHLUETER WOULD APPLY TO THE OTHER THREE PERSONS.
2. THE RESPONDENT TAKES THE POSITION THAT THE NAMED PERSONS ARE NOT EMPLOYEES BUT ARE INDEPENDENT CONTRACTORS.
3. THE RESPONDENT IS PARTY TO AN AGREEMENT WITH THE CITY OF WINDSOR FOR THE COLLECTION AND DISPOSAL OF GARBAGE WITHIN A DEFINED AREA. THE RESPONDENT IS ALSO PARTY TO AN AGREEMENT WITH EACH OF THE FOUR PERSONS WHEREIN THE FOUR PERSONS AGREE TO COLLECT AND DISPOSE OF THE GARBAGE FROM APPROXIMATELY 500 PICK-UPS PER DAY, MONDAY TO FRIDAY INCLUSIVE, WITHIN THE AREA DESCRIBED IN THE AGREEMENT WITH THE CITY OF WINDSOR. THE FOUR PERSONS OPERATE ONE MAN OPERATED GARBAGE PACKERS. THE AGREEMENT BETWEEN THE RESPONDENT AND EACH OF THE FOUR PERSONS READS IN PART AS FOLLOWS:

(A) THE SUM OF TWO HUNDRED DOLLARS (\$200.00) IN CASH ON FRIDAY OF EACH WEEK DURING

THE TERM OF THIS AGREEMENT, THE FIRST OF SUCH PAYMENTS TO BE MADE ON THE 28TH DAY OF AUGUST, 1970;

(B) THE SUM OF FOUR HUNDRED AND NINETY-SIX DOLLARS AND FORTY-SIX CENTS (\$496.46) PER MONTH TO BE PAID TO A CORPORATION KNOWN AS SUPERIOR SANITATION SERVICES LIMITED ON THE 24TH DAY OF EACH AND EVERY MONTH FROM SEPTEMBER, 1970 TO AUGUST, 1974, BOTH INCLUSIVE, IN DISCHARGE OF THE SUB-CONTRACTOR'S OBLIGATIONS TO THE SAID SUPERIOR SANITATION SERVICES LIMITED FOR THE PURCHASE PRICE OF CERTAIN EQUIPMENT PURSUANT TO A CONDITIONAL SALES AGREEMENT BEARING EVEN DATE HERewith BETWEEN THE SAID SUPERIOR SANITATION SERVICES LIMITED AS SELLER AND THE SUB-CONTRACTOR AS BUYER;

(C) THE BALANCE OF SUCH AMOUNT, SUBJECT TO THE HOLDBACK HEREINAFTER REFERRED TO AND SUBJECT TO DEDUCTION FROM TIME TO TIME IN RESPECT OF ANY PAYMENTS MADE BY THE CONTRACTOR ON BEHALF OF THE SUB-CONTRACTOR AND ANY AMOUNTS OWING BY THE SUB-CONTRACTOR TO THE CONTRACTOR, ON A CALENDAR, QUARTERLY BASIS ON THE LAST DAY OF EACH OF THE MONTHS OF FEBRUARY, MAY, AUGUST AND NOVEMBER IN EACH YEAR DURING THE TERM OF THIS AGREEMENT, THE FIRST OF SUCH PAYMENTS TO BE MADE ON THE 30TH DAY OF NOVEMBER, 1970; DURING THE TERM OF THIS AGREEMENT, THE CONTRACTOR SHALL BE ENTITLED TO RETAIN OUT OF THE SAID BALANCE A HOLDBACK IN THE AMOUNT OF TWO THOUSAND, FIVE HUNDRED DOLLARS (\$2,500.00), SUCH AMOUNT, LESS ANY DEDUCTIONS AS AFORESAID, TO BE PAID TO THE SUB-CONTRACTOR THIRTY (30) DAYS AFTER THE TERMINATION OF THIS AGREEMENT AS HEREINAFTER PROVIDED.

3. THE SUB-CONTRACTOR COVENANTS AND AGREES THAT HE WILL AT ALL TIMES DURING THE TERM OF THIS AGREEMENT COMPLY WITH THE PROVISIONS OF THE WINDSOR AGREEMENT SO FAR AS MAY BE APPLICABLE TO THE PERFORMANCE OF THIS AGREEMENT AND IN PARTICULAR, BUT NOT SO AS TO RESTRICT THE GENERALITY OF THE FOREGOING, PARAGRAPHS NUMBERED 2, 6, 9, 11 AND 15 OF THE "SPECIFICATIONS FOR GARBAGE COLLECTION" AND THE SECOND PARAGRAPH OF PARAGRAPH NUMBERED 14 OF THE "GENERAL CONDITIONS" ATTACHED TO AND FORMING PART OF THE SAID WINDSOR AGREEMENT.

4. (A) THE SUB-CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROVISION OF AND PAYMENT FOR ALL LICENCE FEES, MAINTENANCE AND REPAIRS, FUEL AND OPERATING EXPENSES

OF THE TRUCK AND PACKER REFERRED TO IN THE SAID CONDITIONAL SALES AGREEMENT AND ANY REPLACEMENTS THEREOF;

(B) THE CONTRACTOR SHALL ARRANGE FOR AND MAINTAIN IN FULL FORCE AND EFFECT, BUT AT THE EXPENSE OF THE SUB-CONTRACTOR, ALL NECESSARY INSURANCE INCLUDING COLLISION DAMAGE AND PUBLIC LIABILITY INSURANCE IN RESPECT OF THE SAID TRUCK AND PACKER AND IN RESPECT OF THE PERFORMANCE BY THE SUB-CONTRACTOR OF THIS AGREEMENT.

5. AT ALL TIMES DURING THE TERM OF THIS AGREEMENT AND THE TERMS OF THREE SIMILAR AGREEMENTS BETWEEN THE CONTRACTOR ON THE ONE HAND AND THREE OTHER SUB-CONTRACTORS ON THE OTHER HAND IN RESPECT OF THE COLLECTION AND DISPOSAL OF GARBAGE FROM OTHER PICK-UPS IN THE AREA DESCRIBED IN THE WINDSOR AGREEMENT, ONE SPARE TRUCK AND PACKER OF A TYPE SIMILAR TO THOSE DESCRIBED IN THE SAID CONDITIONAL SALES AGREEMENT IN GOOD RUNNING ORDER IS TO BE KEPT AVAILABLE BY THE CONTRACTOR FOR RENTAL BY THE SAID FOUR SUB-CONTRACTORS FROM TIME TO TIME IN THE EVENT THE TRUCK AND PACKER OF ONE OF THE SAID FOUR SUB-CONTRACTORS BE TEMPORARILY DISABLED. THE CONTRACTOR SHALL FURTHER KEEP AVAILABLE DURING THE TERMS OF THIS AGREEMENT AND THE SAID OTHER THREE SIMILAR AGREEMENTS A SPARE DRIVER TO ACT AS A SUBSTITUTE FOR ANY OF THE SAID FOUR SUB-CONTRACTORS WHO MAY FROM TIME TO TIME BE ON HOLIDAYS OR DISABLED BY ILLNESS OR INJURY.

6. THE SUB-CONTRACTOR COVENANTS THAT HE WILL NOT, DURING THE PERIOD OF TWO (2) YEARS FOLLOWING THE TERMINATION OF THIS AGREEMENT AS HEREINAFTER PROVIDED, ENGAGE OR ATTEMPT TO ENGAGE DIRECTLY OR INDIRECTLY, AS AN INDIVIDUAL, MEMBER OR EMPLOYEE OF A FIRM OR DIRECTOR, OFFICER OR SHAREHOLDER OF A CORPORATION, IN ANY CONTRACTUAL OR SUB-CONTRACTUAL RELATIONSHIP FOR THE COLLECTION AND DISPOSAL OF GARBAGE IN ANY MUNICIPALITY IN WHICH THE CONTRACTOR OR THE SAID SUPERIOR SANITATION SERVICES LIMITED MAY, DURING THE TERM OF THIS AGREEMENT OR WITHIN TWO (2) YEARS AFTER THE TERMINATION THEREOF, BE ENGAGED OR ATTEMPTING TO ENGAGE IN A GARBAGE COLLECTION AND DISPOSAL CONTRACT OR SUB-CONTRACT; IT BEING UNDERSTOOD AND AGREED THAT THIS COVENANT SHALL NOT PROHIBIT THE SUB-CONTRACTOR FROM ENGAGING, DURING THE SAID PERIOD OF TWO (2) YEARS, IN THE CAPACITY OF AN EMPLOYEE ONLY OF AN INDIVIDUAL, FIRM OR CORPORATION WHO OR WHICH MAY HAVE A CONTRACT OR SUB-CONTRACT FOR THE COLLECTION OR DISPOSAL OF GARBAGE.

7. WITHOUT THE CONSENT IN WRITING OF THE CONTRACTOR, THE SUB-CONTRACTOR SHALL NOT ASSIGN OR SUB-LET THIS AGREEMENT OR SELL, MORTGAGE OR OTHERWISE DISPOSE OF THE SAID TRUCK AND PACKER OR SUBSTITUTE REPLACEMENT EQUIPMENT THEREFOR.
8. THE TERM OF THIS AGREEMENT SHALL BE FOR THE PERIOD OF FIVE (5) YEARS FROM THE 24TH DAY OF AUGUST, 1970 SUBJECT TO THE RIGHT OF THE CONTRACTOR TO TERMINATE THIS AGREEMENT AT ANY TIME DURING THE SAID PERIOD OF FIVE (5) YEARS UPON DEFAULT BY THE SUB-CONTRACTOR IN THE PERFORMANCE OF THIS AGREEMENT.
9. UPON THE TERMINATION OF THIS AGREEMENT, THE CONTRACTOR SHALL, PROVIDED THE SUB-CONTRACTOR SO ELECT, PURCHASE THE SAID TRUCK AND PACKER FROM THE SUB-CONTRACTOR FOR THE SUM OF TWO THOUSAND, FIVE HUNDRED DOLLARS (\$2,500.00), PAYABLE IN CASH.
4. IT APPEARS FROM THE EVIDENCE CONTAINED IN THE EXAMINER'S REPORT THAT SUPERIOR SANITATION SERVICES LIMITED IS RELATED TO OR CONTROLLED BY THE RESPONDENT OR ITS OFFICERS.
5. NONE OF THE USUAL DEDUCTIONS SUCH AS INCOME TAX, ONTARIO HOSPITAL, OR CANADA PENSION PLAN ARE MADE BY THE RESPONDENT FROM THE EARNINGS OF THE DISPUTED PERSONS.
6. WHILE THERE IS NO AGREED STARTING TIME, THE BY-LAWS OF THE CITY OF WINDSOR EFFECTIVELY CONTROL THE WORKING HOURS OF THE FOUR PERSONS SINCE GARBAGE CANNOT BE COLLECTED PRIOR TO 8:00 A.M.
7. THE NAME "SUBURBAN SANITATION" WHICH IS THE TRADE NAME OF THE RESPONDENT APPEARS ON THE TRUCK TOGETHER WITH THE NAME OF THE DISPUTED PERSON WHO OPERATES THIS PARTICULAR TRUCK.
8. ANY COMPLAINTS CONCERNING GARBAGE COLLECTION ARE USUALLY MADE TO SUBURBAN SANITATION OR THE RESPONDENT.
9. THE TRUCKS CONTAIN TWO-WAY RADIOS WHICH ARE OWNED BY THE RESPONDENT AND ARE USED BY THE RESPONDENT TO CONTACT THE DRIVERS ABOUT COMPLAINTS IF THE OCCASION ARISES. THESE COMPLAINTS ARE FORWARDED TO THE DRIVERS BY AN OFFICE GIRL WHO IS AN EMPLOYEE OF THE RESPONDENT BUT WHO HAS NO AUTHORITY OVER THE FOUR PERSONS. ACCOUNTS FOR GAS, OIL, TRUCK REPAIRS, ETC. ARE APPROVED BY THE FOUR PERSONS AND ARE PAID BY THE RESPONDENT FROM MONEY HELD IN THE TRUCK ACCOUNT MAINTAINED BY THE RESPONDENT AS SET OUT IN THE TERMS OF THE AGREEMENT BETWEEN THE RESPONDENT AND THE FOUR PERSONS.

10. EACH OF THE FOUR PERSONS IS THE REGISTERED OWNER OF THE TRUCK DRIVEN BY HIM. THE EVIDENCE IS THAT "THERE ARE NO SPECIAL LICENCES REQUIRED TO OPERATE A GARBAGE TRUCK IN WINDSOR".

11. THE OPERATORS HAVE ARRANGED PRIVATELY WITH CERTAIN PERSONS TO DISPOSE OF GARBAGE THAT THEY ARE NOT REQUIRED TO COLLECT UNDER THE CONTRACT WITH THE RESPONDENT. MR. SCHLUETER TESTIFIED THAT HE HAD EIGHT OTHER CUSTOMERS APART FROM THE RESPONDENT AND WAS ATTEMPTING TO OBTAIN MORE.

12. AFTER EXPENSES, MR. SCHLUETER EXPECTS TO MAKE A PROFIT OF \$5,000 TO \$7,000 A YEAR IN ADDITION TO HIS DRAWINGS OF \$200 PER WEEK. THE RESPONDENT DOES NOT CONTROL THE DAY-TO-DAY MANNER IN WHICH THE FOUR PERSONS OPERATE. IF ANY OF THE FOUR PERSONS FAIL TO COMPLY WITH THE REQUIREMENTS OF THE TERMS OF THE AGREEMENT WITH THE RESPONDENT, THEIR CONTRACT WITH THE RESPONDENT MAY BE TERMINATED.

13. WHILE AGREEMENT BETWEEN THE RESPONDENT AND EACH OF THE FOUR PERSONS HAVE CERTAIN DEFICIENCIES (E.G. THE AMOUNT OF RENTAL OF THE SPARE TRUCK IS NOT SET OUT) AND WHILE THE RESPONDENT HAS ATTEMPTED TO PROVIDE PROTECTION FOR ITS INTEREST IN THE VEHICLES AND THE PERFORMANCE OF ITS CONTRACT WITH THE CITY OF WINDSOR, WE FIND THAT THE TERMS OF THE AGREEMENT BETWEEN THE RESPONDENT AND EACH OF THE FOUR PERSONS CREATE AN INDEPENDENT CONTRACTOR RELATIONSHIP BETWEEN THE RESPONDENT AND THE FOUR PERSONS.

14. THE FOUR FACTORS OF CONTROL, OWNERSHIP OF TOOLS, CHANCE OF PROFIT AND RISK OF LOSS, REFERRED TO IN THE NICK'S HAULAGE LIMITED CASE OLRB MONTHLY REPORT, NOVEMBER 1970, P. 873 ARE SUFFICIENTLY SATISFIED IN THIS CASE.

15. THE ELEMENT OF CONTROL EXERCISED BY THE RESPONDENT IS NOT DIRECTED TO THE MANNER IN WHICH THE WORK IS PERFORMED BUT IS DIRECTED TO THE RESPONDENT'S FINANCIAL INTEREST IN ITS RELATIONSHIP WITH THE FOUR PERSONS. WHILE THE RESPONDENT EXERCISES A GREAT DEAL OF CONTROL OVER THE FINANCIAL ASPECTS OF THE RELATIONSHIP, THERE IS NO REAL CONTROL OVER THE DAY-TO-DAY OPERATIONS. INSOFAR AS THE BY-LAWS AND REGULATIONS OF THE CITY OF WINDSOR PERMIT, THE FOUR PERSONS HAVE COMPLETE CONTROL OVER THE TIME AND MANNER IN WHICH GARBAGE IS COLLECTED. THEY ALSO HAVE ARRANGED FOR OTHER CUSTOMERS IN ADDITION TO THE RESPONDENT AND THE RESPONDENT DOES NOT PARTICIPATE IN ANY PROFITS DERIVED FROM THIS ADDITIONAL BUSINESS. WHILE TITLE TO THE TRUCKS WILL NOT PASS TO THE FOUR PERSONS UNTIL THE TRUCKS ARE PAID FOR, THE FOUR PERSONS ARE THE REGISTERED OWNERS OF THE VEHICLES AND THEY ARE RESPONSIBLE FOR THE INSURANCE COVERAGE ON THE VEHICLES. SINCE THE EVIDENCE INDICATES THAT THE CITY OF WINDSOR DOES NOT REQUIRE SPECIAL LICENCES TO COLLECT GARBAGE, THERE IS NOTHING TO PREVENT THE FOUR PERSONS FROM USING THE GARBAGE TRUCKS IN ANY MANNER THEY SEE FIT.

16. THE EVIDENCE ALSO DISCLOSES THAT THE FOUR PERSONS ANTICIPATE A PROFIT OF \$5,000 TO \$7,000 PER YEAR OVER AND ABOVE THEIR WEEKLY DRAWINGS. WHILE THE CHANCE OF PROFITS ANTICIPATED MAY NOT TAKE INTO CONSIDERATION ALL THE EXPENSES THAT WILL BE INCURRED SUCH AS THE DEPRECIATION ON THE TRUCK, THERE IS NOTHING TO INDICATE THAT NO PROFIT WILL LIKELY BE REALIZED. INDEED, THE ADDITIONAL CUSTOMERS SHOULD ADD TO THE PROFIT PREDICTED BY MR. SCHLUETER.

17. THERE IS, OF COURSE, A VERY REAL RISK OF LOSS FOR NON-PERFORMANCE OF THE AGREEMENT OR IF THE VEHICLE EXPENSES AND DEPRECIATION EXCEED THE AMOUNT ANTICIPATED. THE RESTRICTIVE COVENANT CONTAINED IN THE AGREEMENT BETWEEN THE RESPONDENT AND THE FOUR PERSONS WHICH TAKE EFFECT FOLLOWING THE TERMINATION OF THE AGREEMENT FURTHER ADDS TO THE RISK OF LOSS.

18. WHETHER OR NOT THE FOUR PERSONS HAVE MADE A GOOD DEAL WITH THE RESPONDENT, WE ARE SATISFIED, ESPECIALLY IN VIEW OF THE EVIDENCE CONCERNING THE OTHER CUSTOMERS THAT HAVE BEEN OBTAINED, THAT THE RELATIONSHIP BETWEEN THE FOUR PERSONS AND THE RESPONDENT IS THAT OF INDEPENDENT CONTRACTORS.

19. THE BOARD THEREFORE FINDS THAT HENRY SCHLUETER, EDWARD SPENCER, MIKE KOLPEAN AND RAY GUTHRIE ARE INDEPENDENT CONTRACTORS AND ACCORDINGLY ARE NOT EMPLOYEES OF THE RESPONDENT FOR THE PURPOSES OF THE ACT.

DECISION OF BOARD MEMBER E. BOYER: APRIL 6, 1971.

I DISSENT.

HAVING REGARD TO THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER AND THE REPRESENTATIONS OF THE PARTIES WITH RESPECT THERETO, I FIND THAT THE RESPONDENT HAS ATTEMPTED TO EVADE ITS COLLECTIVE BARGAINING RESPONSIBILITIES BY TRYING TO SET THE FOUR PERSONS UP AS INDEPENDENT CONTRACTORS. IT IS MY VIEW THAT THE RESPONDENT HAS FAILED IN ITS ATTEMPT AND THAT THE RELATIONSHIP BETWEEN THE RESPONDENT AND EACH OF THE FOUR PERSONS IS THAT OF AN EMPLOYER-EMPLOYEE. I WOULD THEREFORE FIND THAT THE FOUR PERSONS ARE EMPLOYEES OF THE RESPONDENT FOR THE PURPOSE OF THE ACT.

18850-70-M: GENERAL TRUCK DRIVERS' UNION LOCAL 879 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. HAMILTON TRUCKING LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: T. E. ARMSTRONG AND R. ARNOLD FOR THE APPLICANT, W. S. COOK AND J. ESSERY FOR THE RESPONDENT.

DECISION OF THE BOARD: APRIL 29, 1971.

1. THIS IS AN APPLICATION UNDER SECTION 79(2) OF THE LABOUR RELATIONS ACT WHEREIN THE APPLICANT HAS REQUESTED THE BOARD TO DETERMINE WHETHER CERTAIN NAMED PERSONS ARE EMPLOYEES OF THE RESPONDENT FOR THE PURPOSES OF THE ACT. THE RESPONDENT TAKES THE POSITION THAT THE DISPUTED PERSONS ARE NOT EMPLOYEES BUT ARE "BROKERS" OR INDEPENDENT CONTRACTORS.
2. BY WAY OF PRELIMINARY OBJECTION, THE RESPONDENT ARGUED THAT THE BOARD SHOULD NOT MAKE THE DETERMINATION REQUESTED BY THE APPLICANT IN THIS MATTER BECAUSE THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES PROVIDES FOR THE CREATION OF THE "BROKERS" IN CERTAIN CIRCUMSTANCES. IT WAS THE RESPONDENT'S POSITION THAT ITS AGREEMENTS WITH THE PERSONS IN DISPUTE MERELY ACCOMPLISHED THAT WHICH WAS CONTEMPLATED BY THE PROVISIONS OF THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES. THE RESPONDENT THEREFORE TOOK THE POSITION THAT ANY DISPUTE BETWEEN THE PARTIES WITH RESPECT TO THE SAID BROKER AGREEMENTS WAS A MATTER THAT SHOULD BE DETERMINED BY ARBITRATION UNDER THE COLLECTIVE AGREEMENT THAN BY THIS BOARD.
3. THE BOARD IS NOT ABLE TO AGREE TO THE RESPONDENT'S SUBMISSIONS AS SET OUT ABOVE. IF THE BOARD WERE TO FIND THAT THE AGREEMENTS BETWEEN THE RESPONDENT AND THE DISPUTED PERSONS MERELY ACCOMPLISHED THAT WHICH IS CONTEMPLATED BY THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES, SUCH A FINDING WOULD REQUIRE THE BOARD TO INTERPRET THE COLLECTIVE AGREEMENT. WHILE THE BOARD'S FINDINGS IN THIS CASE MAY BE PRELIMINARY TO AN ARBITRATION OR MAY EVEN OBIVATE THE NECESSITY OF TAKING THE DISPUTE TO ARBITRATION, THE DETERMINATION REQUESTED BY THE APPLICANT DOES NOT REQUIRE THE BOARD TO INTERPRET THE COLLECTIVE AGREEMENT. SINCE THERE IS NOTHING IN THE ACT WHICH PRECLUDES THE BOARD FROM MAKING THE DETERMINATION REQUESTED, THE BOARD FINDS THAT IT HAS JURISDICTION UNDER SECTION 79(2) OF THE ACT AND SHOULD ACCORDINGLY DEAL WITH THIS APPLICATION ON ITS MERITS.
4. FOLLOWING THE APPOINTMENT OF THE EXAMINER IN THIS MATTER, THE PARTIES AGREED THAT THE EVIDENCE OF O. ROMMELAERE WOULD APPLY TO ALL PERSONS IN DISPUTE. A HEARING WAS HELD IN THIS MATTER TO AFFORD THE PARTIES AN OPPORTUNITY TO MAKE SUBMISSIONS WITH RESPECT TO THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER DATED MARCH 5, 1971.
5. HAVING REGARD TO ALL THE EVIDENCE AND THE REPRESENTATIONS MADE WITH RESPECT THERETO, THE BOARD FINDS THAT THE DISPUTED PERSONS WERE COVERED BY A COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT PRIOR TO DECEMBER 1, 1970. ON NOVEMBER 28, 1970, THE PER-

SONS IN DISPUTE ENTERED AGREEMENTS WITH THE RESPONDENT WHEREIN THE PERSONS AGREED TO PURCHASE THE VEHICLES THEY HAD DRIVEN FOR THE RESPONDENT AS EMPLOYEES AND TO TRANSPORT GOODS FROM THE RESPONDENT'S CUSTOMERS IN SUBSTANTIALLY THE SAME MANNER AS THEY PREVIOUSLY HAD DONE AS EMPLOYEES. HOWEVER, THE DRIVERS WERE TO BE PAID A PERCENTAGE OF THE PROFITS IN ACCORDANCE WITH THE TERMS OF THE AGREEMENT WHICH WAS TO BE EFFECTIVE ON DECEMBER 1, 1970.

6. THE RELEVANT PORTIONS OF THE AGREEMENT THE RESPONDENT AND THE DISPUTED PERSONS (REFERRED TO THEREIN AS CONTRACTORS) READ AS FOLLOWS:

1. UNTIL SUCH TIME AS THE TRACTOR IS FULLY PAID FOR UNDER THE TERMS OF THIS AGREEMENT, THE TITLE TO LICENSE AND OWNERSHIP OF THE TRACTOR SHALL, UNDER THE TERMS OF THIS AGREEMENT, REMAIN IN THE COMPANY AND THIS AGREEMENT SHALL NOT BE CONSTRUED AS A SALE OR CONDITIONAL SALE BY THE COMPANY TO THE CONTRACTOR; PROVIDED, HOWEVER, THAT ALL PERMITS AND LICENSE PLATES INCLUDING P.C.V. LICENSES SHALL BE PAID FOR BY THE CONTRACTOR.

3. THE CONTRACTOR COVENANTS WITH THE COMPANY THAT HE WILL USE THE TRACTOR EXCLUSIVELY FOR HAULING OF GOODS FOR AND ON BEHALF OF THE COMPANY AS THE COMPANY MAY DIRECT.

10. ASSUMPTION OF LIABILITY AND INSURANCE

(A) THE COMPANY AS BETWEEN ITSELF AND SHIPPERS ASSUMES RESPONSIBILITY AS A COMMON CARRIER WITH RESPECT TO THE OPERATION OF THE SAID VEHICULAR EQUIPMENT ON ITS BEHALF.

11. THE CONTRACTOR EXPRESSLY AGREES THAT DURING THE CONTINUANCE OF THIS AGREEMENT:

(A) HE WILL NOT PERMIT THE TRACTOR TO BE USED BY ANY OTHER PERSON FOR HAULING OR FOR PURPOSES OTHER THAN THOSE PROVIDED IN THIS AGREEMENT WITHOUT FIRST OBTAINING PERMISSION, IN WRITING, FROM THE COMPANY; AND

(B) HE WILL USE THE TRACTOR IN A CAREFUL AND PRUDENT MANNER, AND WHILE SO DOING WILL CONFORM AND ABIDE BY THE RULES AND REGULATIONS OF THE COMPANY ATTACHED HERETO AS SCHEDULE "A";

(C) HE WILL COMPLY WITH ALL SAFETY CODES, RULES AND REGULATIONS AS ESTABLISHED BY ANY GOVERNMENTAL AUTHORITY AND SHALL EXERCISE AND CARRY OUT ALL ORDERS AND DUTIES AND OBSERVE ALL DIRECTIONS AND INSTRUCTIONS AS THE COMPANY SHALL LAWFULLY FROM TIME TO TIME IMPOSE UPON HIM. HE WILL NOT, WITHOUT PERMISSION OF THE PROPER OFFICER OF THE COMPANY, DIRECTLY OR INDIRECTLY, ENGAGE IN ANY WAY IN THE CARTAGE OR TRANSPORTATION OF GOODS EITHER ON HIS OWN BEHALF OR ON BEHALF OF ANY OTHER PERSON.

14. DURING THE EXTENT OF THIS AGREEMENT THE TRACTOR IS TO BE KEPT, WHEN NOT IN USE FOR HAULAGE, AT THE HAMILTON TERMINAL OF THE COMPANY IN THE SAID CITY OF HAMILTON UNLESS OTHERWISE MUTUALLY AGREED UPON IN WRITING.

17. THE OPERATOR FURTHER AGREES TO PAINT, AND KEEP PAINTED, SAID VEHICULAR EQUIPMENT IN ACCORDANCE WITH SPECIFICATIONS OF THE COMPANY; TO AFFIX, AND KEEP AFFIXED THEREON, SUCH SYMBOLS, INSIGNIA, AND OTHER IDENTIFICATION AS ARE, FROM TIME TO TIME, SPECIFIED BY THE COMPANY; ...

23. IT IS THE INTENT OF THE PARTIES HERETO THAT THE OPERATOR IS AN INDEPENDENT OPERATOR ONLY, AND NEITHER THE OPERATOR NOR THE OPERATOR'S EMPLOYEES ARE EMPLOYEES OF THE COMPANY.

7. ALSO, IN ADDITION TO DETAILED PROVISIONS CONCERNING THE FINANCIAL ARRANGEMENT BETWEEN THE RESPONDENT AND THE OPERATORS, THE AGREEMENT CONTAINED A RESTRICTIVE COVENANT WITH RESPECT TO COMPETITION BY THE OPERATORS.

8. THE DISPUTED PERSONS HAVE NO CUSTOMERS OF THEIR OWN BUT WORK EXCLUSIVELY FOR THE RESPONDENT SERVICING THE RESPONDENT'S CUSTOMERS. IN ADDITION, THEY DO NOT PARTICIPATE IN SETTING THE RATES PAID BY THE CUSTOMERS AND ARE NOT LICENSED AS PUBLIC COMMERCIAL VEHICLE OPERATORS OR CARTAGE OPERATORS. ALL LICENCES ARE HELD BY THE RESPONDENT.

9. WHILE THE AGREEMENT STATES THAT THE DISPUTED PERSONS ARE INDEPENDENT CONTRACTORS AND WHILE SOME OF THE ELEMENTS ARE PRESENT WHICH MIGHT LEAD TO THE FINDING THAT THEY ARE INDEPENDENT CONTRACTORS, THE EVIDENCE WHEN VIEWED AS A WHOLE CLEARLY ESTABLISHES THAT WHILE THE METHOD OF PAYMENT HAS CHANGED, THE DISPUTED PERSONS REMAIN EMPLOYEES OF THE RESPONDENT. SINCE THE DISPUTED PERSONS ARE NOT LICENSED AS P.C.V. OPERATORS OF CARTAGE CONTRACTORS, THEY CANNOT HOLD THEMSELVES OUT TO THE PUBLIC AS INDEPENDENT OPERATORS OR CONTRACTORS. IN ADDITION, ITEM 3 OF THE AGREEMENT WITH THE RESPONDENT, WHICH IS REFERRED TO ABOVE, PROHIBITS THE OPERATORS FROM CARRYING ON BUSINESS IN OPPOSITION TO THE RESPONDENT'S HAULAGE BUSINESS AND PROVIDES THAT THE OPERATORS WORK EXCLUSIVELY HAULING GOODS FOR OR ON BEHALF OF THE RESPONDENT.

10. WHERE THE EVIDENCE ESTABLISHES THAT LICENSING REQUIREMENTS OR THE AGREEMENT WHICH PURPORTS TO SET UP AN INDEPENDENT CONTRACTOR RELATIONSHIP PREVENT A PERSON FROM HOLDING HIMSELF OUT TO THE PUBLIC AS AN INDEPENDENT CONTRACTOR IN THE BUSINESS HE IS SUPPOSED TO BE CARRYING ON, IT CANNOT BE SAID THAT HE IS TRULY AN INDEPENDENT CONTRACTOR IN THAT BUSINESS. WHERE A PERSON IS PRECLUDED FROM HOLDING HIMSELF OUT TO THE PUBLIC AS AN INDEPENDENT CONTRACTOR, IT MUST BE FOUND THAT HE DOES NOT ENJOY THAT STATUS (SEE DEARIE & WARREN LIMITED CASE, OLRB MONTHLY REPORT, NOVEMBER 1970, P. 816).

11. IT IS CLEAR FROM THE EVIDENCE THAT THE AGREEMENT DATED NOVEMBER 28, 1970 HAS ALTERED THE RELATIONSHIP BETWEEN THE RESPONDENT AND THE OPERATORS OF THE TRUCKS, SINCE THE AGREEMENT HAS INTRODUCED A NEW RELATIONSHIP BETWEEN, THE RESPONDENT AND ITS OPERATORS BY VIRTUE OF THE OPERATORS' AGREEMENT TO PURCHASE THE TRUCKS. HOWEVER, WHILE THE OPERATORS HAVE A NEW RELATIONSHIP INsofar AS THE PURCHASE OF THE TRUCKS IS CONCERNED, THE EMPLOYER-EMPLOYEE RELATIONSHIP REMAINS INsofar AS THE PERFORMANCE OF WORK IS CONCERNED, EVEN THOUGH THAT RELATIONSHIP HAS BEEN ALTERED BY REASON OF THE NEW METHOD OF PAYMENT FOR SUCH WORK. THIS DUAL RELATIONSHIP IS NOT ENTIRELY NEW TO THIS BOARD' (SEE LENSON CELERY HEARTS LTD. CASE, OLRB MONTHLY REPORT, MAY 1963, P. 107).

12. AGAIN, THE EVIDENCE OF THIS CASE FAILS TO ESTABLISH THAT THERE HAS BEEN SUBSTANTIAL COMPLIANCE WITH ALL THE FACTORS IN THE FOURFOLD TEST COMMONLY APPLIED TO DETERMINE THE STATUS OF AN INDEPENDENT CONTRACTOR. WHILE THERE MAY BE A RISK OF LOSS AND, IN A

CERTAIN SENSE A CHANCE OF "PROFIT", THE "PROFIT" IS DEPENDENT ON HOW HARD THE OPERATOR WORKS. PAYMENT WHICH IS PAID BY WAY OF A COMMISSION ON THE PERCENTAGE OF GROSS REVENUES CREATES THE INCENTIVE TO WORK. HOWEVER, THE OPERATOR DOES NOT PARTICIPATE IN THE ESTABLISHMENT OF HIS OWN RATES. WHERE THERE IS NO CONTROL OVER THE RATES CHARGED, AS IN THIS CASE, THE COMMISSION PAYMENT IS MORE PROPERLY CHARACTERIZED AS WAGES RATHER THAN PROFIT. THE CONTROL EXERCISED BY THE RESPONDENT AS EVIDENCED BY THE WORK RULES, ETC., IS SIMILAR TO THE CONTROL ONE COMMONLY FINDS IS EXERCISED OVER EMPLOYEES IN THIS INDUSTRY. IT IS FURTHER NOTED THAT THE OWNERSHIP OF TOOLS REMAINS WITH THE RESPONDENT SINCE BOTH THE TRACTORS AND LICENCES ARE HELD BY THE RESPONDENT.

13. THE FACTS OF THIS CASE AS SET OUT ABOVE READILY DISTINGUISH THIS CASE FROM THE DECISIONS OF THE BOARD RELIED ON BY THE RESPONDENT INCLUDING THE DECISION IN THE AGILIS CORPORATION LIMITED CASE, DATED APRIL 6, 1971, BOARD FILE 18647-70-M, AND CANADA BREAD COMPANY LIMITED CASE, VOLUME 2, CLLC 1960-1964 ¶16,223.

14. THE BOARD THEREFORE FINDS THAT O. ROMMELAERE, J. DESROCHES, YVONNE BELLAVANCE, KENNETH TOULTON, EDWARD ROOKE, GARY GARDINER, J. WAHLMAN, R. O'GRADY AND R. DUCHARME ARE EMPLOYEES OF THE RESPONDENT FOR THE PURPOSES OF THE ACT.

182-70-M: PERMA-MIX LIMITED (EMPLOYER) v. TEAMSTERS' LOCAL UNION 879 (TRADE UNION).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND O. HODGES.

APPEARANCES AT THE HEARING: T. E. ARMSTRONG, D. McILRAVEY AND L. SCHULTZ FOR THE EMPLOYER, J. P. SANDERSON, K. G. SCOTT, ROBERT SINKE AND W. EASBY FOR THE TRADE UNION.

DECISION OF THE BOARD: APRIL 5, 1971.

1. THE MINISTER OF LABOUR HAS REFERRED TO THE BOARD, PURSUANT TO SECTION 79A OF THE LABOUR RELATIONS ACT, THE QUESTION AS TO WHETHER THE MINISTER HAS THE AUTHORITY UNDER THE ACT TO APPOINT A CONCILIATION OFFICER. AT THE HEARING THE PARTIES AGREED THAT THE ONLY ISSUE BETWEEN THEM WAS WHETHER THE SALE FROM AIKEN AND MacLACHLAN LIMITED TO THE EMPLOYER WAS A SALE OF ASSETS AS CONTENDED BY THE EMPLOYER OR THE SALE OF BUSINESS AS CONTENDED BY THE TRADE UNION.

2. PRIOR TO THE EVENTS IN QUESTION, THE TRADE UNION HAD AN ACTIVE COLLECTIVE BARGAINING RELATIONSHIP WITH AIKEN AND MacLACHLAN LIMITED. ON JANUARY 14, 1971, THE EMPLOYER ENTERED INTO AN OFFER TO

PURCHASE WITH AIKEN AND MACLACHLAN LIMITED. THE CLOSING DATE FOR THE PURCHASE WAS FEBRUARY 1, 1971. AT FIRST GLANCE, THE OFFER MIGHT APPEAR TO BE SIMPLY AN OFFER TO PURCHASE CERTAIN ASSETS. HOWEVER, WHEN THE TERMS OF THE OFFER ARE STUDIED IN SOME DETAIL, IT IS APPARENT THAT THE PARTIES INTENDED THAT MORE THAN ASSETS BE TRANSFERRED TO THE EMPLOYER IN THIS CASE. UNDER THE TERMS OF THE OFFER, THE EMPLOYER HAD THE RIGHT TO USE THE NAME "AIKEN AND MACLACHLAN LIMITED" AND IN FACT HAS DONE SO SINCE THE SALE WAS COMPLETED. THE EMPLOYER HAS CONTINUED THE BUSINESS FORMERLY CARRIED ON BY AIKEN AND MACLACHLAN LIMITED AT THE SAME LOCATION WITH SUBSTANTIALLY THE SAME EQUIPMENT AND EMPLOYEES WITHOUT INTERRUPTION. AS EVIDENCE THAT THE EMPLOYER PURCHASED A "BUSINESS", THE AGREEMENT PROVIDED IN PART AS FOLLOWS:

11. IN THE EVENT THAT THE VENDOR DOES NOT CONTINUE TO OPERATE THE BUSINESS UNTIL THE DATE FOR CLOSING, THE PURCHASERS ARE TO BE ALLOWED TO GO INTO POSSESSION AND OPERATE THE BUSINESS WITHOUT PREJUDICE.

3. IN ADDITION, THE PARTIES ENTERED INTO A SEPARATE COVENANT WHEREIN AIKEN AND MACLACHLAN LIMITED AND THE PRINCIPALS OF THAT COMPANY AGREED TO REFRAIN FROM CARRYING ON OR PARTICIPATING IN A BUSINESS IN COMPETITION TO THE EMPLOYER WITHIN A DEFINED AREA FOR A TERM OF FIVE YEARS FROM THE 1ST OF FEBRUARY, 1971. ALTHOUGH AIKEN AND MACLACHLAN LIMITED DID NOT PROVIDE THE EMPLOYER WITH A LIST OF ITS CUSTOMERS, THE EMPLOYER RETAINED THE SAME TELEPHONE NUMBER AS WAS USED BY AIKEN AND MACLACHLAN LIMITED IN ITS READY-MIX BUSINESS. THE EVIDENCE ALSO DISCLOSED THAT WHEN TELEPHONE CALLS WERE RECEIVED BY AIKEN AND MACLACHLAN AT ITS QUARRY OPERATION FOR SUPPLIES OF READY-MIX, AIKEN AND MACLACHLAN LIMITED REFERRED SUCH CALLS TO THE EMPLOYER. APART FROM THE ABOVE AND APART FROM THE RETENTION OF CERTAIN PHYSICAL ASSETS BY AIKEN AND MACLACHLAN LIMITED, ALL OTHER ELEMENTS OF THE READY-MIX BUSINESS FORMERLY CARRIED ON BY AIKEN AND MACLACHLAN LIMITED HAVE BEEN TRANSFERRED TO THE EMPLOYER WITH THE EXCEPTION OF THE ACCOUNTS PAYABLE AND RECEIVABLE WHICH WERE RETAINED BY AIKEN AND MACLACHLAN LIMITED.

4. WE ARE ACCORDINGLY SATISFIED THAT WHILE THE ACCOUNTS PAYABLE AND RECEIVABLE WERE NOT TRANSFERRED UNDER THE AGREEMENT BETWEEN THE EMPLOYER AND AIKEN AND MACLACHLAN LIMITED AND WHILE A SMALL PORTION OF ASSETS WERE RETAINED BY AIKEN AND MACLACHLAN LIMITED, THE MAJORITY OF ASSETS ALONG WITH THE GOODWILL OF THE READY-MIX BUSINESS OF AIKEN AND MACLACHLAN LIMITED WERE TRANSFERRED TO THE EMPLOYER IN THIS CASE. IN VIEW OF THE COVENANT AGAINST COMPETITION, WE FIND THAT SUCH TRANSFER CONSTITUTED MORE THAN A MERE TRANSFER OF ASSETS AS ALLEGED BY THE EMPLOYER AND MUST BE SAID TO HAVE CONSTITUTED A SALE OF A BUSINESS, OR A PART THEREOF, WITHIN THE MEANING OF SECTION 47A OF

THE ACT. THE BOARD THEREFORE DECLARES THAT THE EMPLOYER HAS PURCHASED FROM AIKEN AND MACLACHLAN LIMITED THE READY-MIX BUSINESS FORMERLY CARRIED ON BY IT AND SUCH PURCHASE CONSTITUTES A SALE OF A BUSINESS BY AIKEN AND MACLACHLAN LIMITED TO THE EMPLOYER WITHIN THE MEANING OF SECTION 47A OF THE ACT.

5. THE BOARD ACCORDINGLY DECLARES, PURSUANT TO THE PROVISIONS OF SECTION 47A OF THE ACT, THAT THE UNION CONTINUES AS THE BARGAINING AGENT OF THE EMPLOYER FOR ALL EMPLOYEES OF THE EMPLOYER WORKING IN THE CAPACITY OF TRUCK DRIVERS, FLOAT OPERATORS, EUCLID OPERATORS, TRACTOR SEMI DRIVERS, MECHANICS, AND BATCHERS WORKING AT OR OUT OF ST. CATHARINES, SAVE AND EXCEPT THOSE PERSONS PERFORMING SUPERVISORY DUTIES, FOREMEN, OFFICE AND SALES STAFF.

6. IN ANSWER TO THE QUESTION REFERRED TO THE BOARD BY THE MINISTER, WE ACCORDINGLY ADVISE THE MINISTER THAT HE HAS THE NECESSARY AUTHORITY UNDER THE ACT TO APPOINT A CONCILIATION OFFICER TO ASSIST THE PARTIES IN THIS CASE.

18138-70-R: EDMOND BEATTY, HERMANN MORIN, LEON DESCHAMPS, SERAFIM DA COSTA, REGIS VERVILLE, FABIEN BRISSON, ROLLAND HUMBERT, REAL MORIN, RONALD M. LARABEE, GAETAN MORIN, JEAN RIOUX, ARMAND COUTURE, MARCEL CLOUTIER, JEAN-LOUIS MORIN, JEAN GUY JACQUES, GILLES MORIN, JACQUES PELLETIER, CALIXTE MORIN, MARCISSE BELANGER, ROMIO TALBOT, PAUL LEONARD, GEORGES RIOUX, DENIS F. CHEFF, YVES DROULIN, GILLES DUMONT, J. C. BOUCHARD (APPLICANTS) V. CANADIAN CONSTRUCTION, BUILDING MAINTENANCE AND GENERAL WORKERS' UNION (N.C.C.L.) (RESPONDENT) V. L'ABBE CONSTRUCTION LIMITED (INTERVENER).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND J.E.C. ROBINSON, Q.C..

DECISION OF J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBER E. BOYER: APRIL 8, 1971.

1. BY LETTER DATED MARCH 29, 1971 THE SOLICITORS FOR THE INTERVENER HAVE REQUESTED THAT THE BOARD RECONSIDER ITS DECISION OF MARCH 4, 1971.

2. THE SUBMISSIONS ADVANCED IN SUPPORT OF THE REQUEST, AS WE UNDERSTAND THEM, ARE AS FOLLOWS: (1) THE BOARD ATTRIBUTED MANAGERIAL STATUS AND FUNCTIONS TO CERTAIN OF THE INTERVENER'S EMPLOYEES WHICH, IN FACT, THEY DID NOT POSSESS. (2) THE BOARD FOUND AS A FACT THAT THE NON-DISCLOSURE BY THE RESPONDENT OF THE ORGANIZING METHODS IT EMPLOYED DID NOT CONSTITUTE FRAUD BUT STILL TERMINATED THE BARGAINING RIGHTS HELD BY THE RESPONDENT. (3) THE DIVISION OF THE BOARD WHICH

HEARD THE INSTANT APPLICATION SHOULD HAVE BEEN THE SAME DIVISION WHICH HEARD THE RESPONDENT'S APPLICATION FOR CERTIFICATION. (4) ANY CHALLENGE TO THE CERTIFICATION OF THE RESPONDENT IN ACCORDANCE WITH THE BOARD'S PAST PRACTICE CAN ONLY BE DONE BY WAY OF A REQUEST FOR RECONSIDERATION.

3. WE WOULD FIRST STATE THAT THE INTERVENER HAS NOT ALLEGED THAT THERE IS ANY NEW EVIDENCE WHICH, IN OUR OPINION, COULD NOT HAVE BEEN ADDUCED AT THE HEARING OF THE INSTANT APPLICATION NOR HAVE ANY ARGUMENTS BEEN ADVANCED WHICH WERE NOTOR COULD NOT HAVE BEEN MADE AT THE HEARING. NOTWITHSTANDING THESE FACTS, THE BOARD DEEMS IT ADVISABLE TO COMMENT ON THE MATTERS RAISED IN THE LETTER OF THE SOLICITORS FOR THE INTERVENER. THE SUBMISSIONS ARE DEALT WITH BELOW IN THE ORDER IN WHICH THEY ARE SET OUT IN PARAGRAPH 2.

4. THE SOLICITORS FOR THE INTERVENER DID NOT NAME THE PERSONS WHOM THEY ALLEGE WERE DESIGNATED AS BEING MANAGERIAL WITHOUT SUFFICIENT INQUIRY. WE WILL ASSUME, HOWEVER, FOR PURPOSES OF THE REQUEST FOR RECONSIDERATION THAT THE REFERENCE IS TO JACQUES BERNARD, LUCIEN LAROUCHE AND ROLAND LEROUX. IN EVIDENCE, BERNARD WAS IDENTIFIED AS THE CARPENTER FOREMAN, LAROUCHE AS THE LABOURER FOREMAN AND LEROUX AS THE OFFICE MANAGER ON THE SITE OF THE INTERVENER'S NOTRE DAME HOSPITAL CONSTRUCTION PROJECT AT HEARST. THE EVIDENCE OF MOST OF THE EMPLOYEES WHO TESTIFIED AT THE HEARING OF THE INSTANT APPLICATION IS THAT THEY WERE HIRED BY BERNARD OR LAROUCHE. MOREOVER, THE EVIDENCE OF BOTH FOREMEN IS THAT ONE OF THEIR DUTIES WAS TO HIRE EMPLOYEES TO WORK ON THE SITE. PARAGRAPH 17 OF THE BOARD'S DECISION OF MARCH 4, 1971 READS IN PART:

. . . WE WOULD MENTION HERE THAT IN LIGHT OF THE FACT THAT ONE OF THE DUTIES OF BOTH BERNARD AND LAROUCHE WAS TO HIRE EMPLOYEES TO WORK ON THE PROJECT, THERE IS NO QUESTION IN OUR MIND BUT THAT THEY WERE EXERCISING MANAGERIAL RESPONSIBILITIES. SIMILARLY, LEROUX, WHILE PERHAPS NOT A MEMBER OF MANAGEMENT WHILE WORKING AS AN ACCOUNTANT IN OTTAWA, WAS THE PRINCIPAL REPRESENTATIVE OF THE INTERVENER ON THE PROJECT AND ACCORDINGLY, IN THE CONTEXT OF THE HEARST PROJECT, WE FIND THAT HE ALSO WAS MANAGERIAL IN STATUS.

5. THE BOARD IS SATISFIED THAT THERE WAS AMPLE EVIDENCE BEFORE IT UPON WHICH TO MAKE THE ABOVE FINDINGS WITH RESPECT TO THE STATUS OF BERNARD, LAROUCHE AND LEROUX. FURTHER, THE PARTIES WERE AFFORDED FULL OPPORTUNITY TO ADDUCE ANY EVIDENCE THEY DESIRED RELATING TO THE DUTIES AND RESPONSIBILITIES OF THE SAID THREE PERSONS. WE ACCORDINGLY FIND THAT THE REQUEST FOR RECONSIDERATION MADE ON THE GROUNDS THAT THE BOARD ATTRIBUTED MANAGERIAL STATUS AND FUNCTIONS TO CERTAIN OF

THE INTERVENER'S EMPLOYEES, WHICH THE INTERVENER ALLEGES THEY DID NOT POSSESS, IS WITHOUT FOUNDATION. WE ARE NOT PREPARED TO ACCEDE TO THE REQUEST THAT AN EXAMINER BE APPOINTED TO INQUIRE INTO THE DUTIES AND FUNCTIONS OF THE SAID PERSONS.

6. THE SOLICITORS FOR THE INTERVENER SUBMIT THAT THE BOARD FOUND AS A FACT THAT THE NON-DISCLOSURE BY THE RESPONDENT OF THE ORGANIZING METHODS IT EMPLOYED DID NOT CONSTITUTE FRAUD BUT STILL TERMINATED THE BARGAINING RIGHTS HELD BY THE RESPONDENT. THE BOARD FOUND THAT THE NON-DISCLOSURE BY THE RESPONDENT OF ITS COLLUSIVE CONDUCT WITH THE INTERVENER IN THE SECURING OF MEMBERSHIP DOES NOT FALL WITHIN THE PURVIEW OF FRAUD AS DEFINED IN THE COMMON LAW. THE BOARD DID FIND, HOWEVER, THAT THE SAID CONDUCT CONSTITUTED FRAUD WITHIN THE MEANING OF SECTION 44 OF THE LABOUR RELATIONS ACT. IT WAS FOR THIS REASON THAT THE BOARD TERMINATED THE BARGAINING RIGHTS HELD BY THE RESPONDENT.

7. WITH REFERENCE TO THE LAST TWO SUBMISSIONS OF THE SOLICITORS FOR THE INTERVENER, THE POSITION TAKEN BY THE BOARD WAS THAT IF THE APPLICANTS WERE REQUESTING RECONSIDERATION OF THE BOARD'S DECISION OF APRIL 23, 1970 CERTIFYING THE RESPONDENT AS BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF THE INTERVENER, SUCH A REQUEST WOULD HAVE TO BE CONSIDERED BY THE SAME DIVISION OF THE BOARD THAT DEALT WITH THE CERTIFICATION APPLICATION. THE APPLICANTS, HOWEVER, HAVE NOT MADE SUCH A REQUEST FOR RECONSIDERATION. RATHER, THE APPLICANTS HAVE MADE AN APPLICATION FOR TERMINATION OF BARGAINING RIGHTS UNDER SECTION 44 OF THE ACT. THERE IS NO REASON AND IT HAS NOT BEEN THE PRACTICE TO ASSIGN THE SAME DIVISION OF THE BOARD WHICH CERTIFIED A TRADE UNION FOR A UNIT OF EMPLOYEES OF AN EMPLOYER TO HEAR AN APPLICATION TO TERMINATE THOSE BARGAINING RIGHTS WHETHER THE APPLICATION IS MADE UNDER SECTION 43, 44 OR 45 OF THE ACT. INDEED, NOT UNCOMMONLY, A TERMINATION APPLICATION IS MADE MANY YEARS AFTER THE ORIGINAL CERTIFICATION. DUE TO CHANGES FROM TIME TO TIME OF THE BOARD'S PERSONNEL, IT WOULD PROBABLY, NOT INFREQUENTLY, BE IMPOSSIBLE FOR THE SAME DIVISION OF THE BOARD TO HEAR THE TERMINATION APPLICATION. WE ACCORDINGLY REJECT THE ARGUMENT OF THE SOLICITORS FOR THE INTERVENER THAT THE DIVISION OF THE BOARD ASSIGNED TO HEAR THE INSTANT APPLICATION IS NOT PROPERLY CONSTITUTED TO MAKE A DISPOSITION WITH RESPECT TO IT.

8. IN THE RESULT, THE BOARD SEES NO REASON TO VARY OR REVOKE ITS DECISION OF MARCH 4, 1971. THE REQUEST OF THE SOLICITORS FOR THE INTERVENER ACCORDINGLY IS DENIED.

DECISION OF BOARD MEMBER J. E. C. ROBINSON, Q.C.: APRIL 8, 1971.

MY POSITION HAS BEEN SET OUT IN MY INTERIM DECISION OF SEPTEMBER 21, 1970 AND MY FINAL DECISION OF MARCH 4, 1971. IF ONE READS SUCH DECISIONS, IT SHOULD BE CLEAR THAT IT IS UNNECESSARY THAT

1 COMMENT ON THE PRESENT REQUEST FOR A RECONSIDERATION OF THE DECISION OF THE MAJORITY OF MARCH 4, 1971.

18767-70-R: CSAO NATIONAL (INC.) (APPLICANT) V. OAKVILLE TRAFALGAR MEMORIAL HOSPITAL ASSOCIATION (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS O. HODGES AND R. W. TEAGLE.

DECISION OF THE BOARD: APRIL 6, 1971.

1. BY LETTER DATED MARCH 10, 1971, COUNSEL FOR THE APPLICANT REQUESTS THAT THE BOARD RECONSIDER ITS DECISION OF FEBRUARY 19, 1971, PURSUANT TO SECTION 79(1) OF THE LABOUR RELATIONS ACT.

2. IN ITS DECISION OF FEBRUARY 19, 1971, THE BOARD FOUND THAT THE APPLICANT WAS NOT A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE ACT BECAUSE OF ITS DISCRIMINATION AGAINST PROVISIONAL MEMBERS WITH RESPECT TO THE RIGHTS AND PRIVILEGES WHICH THEY CAN EXERCISE WITHIN THE APPLICANT'S ORGANIZATION. IN THE RESULT, THE APPLICANT HAVING FAILED TO ESTABLISH ITS STATUS AS A TRADE UNION THE BOARD DISMISSED THE APPLICANT'S APPLICATION FOR CERTIFICATION AS BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF THE RESPONDENT COMPOSED OF MEDICAL TECHNOLOGISTS AND TECHNICIANS.

3. COUNSEL FOR THE APPLICANT ASSERTS THAT HAVING REGARD TO THE CONSTITUTION AND MORE PARTICULARLY THE BY-LAWS OF THE APPLICANT, THE BOARD ERRED IN REFUSING TO GRANT THE APPLICANT THE STATUS OF A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE ACT. IN SUPPORT OF HIS REQUEST THAT THE BOARD RECONSIDER ITS DECISION, COUNSEL MADE REFERENCE TO PARAGRAPH 18 OF THE BOARD'S DECISION OF FEBRUARY 19, 1971 WHICH IN ITS TOTALITY READS AS FOLLOWS:

18. THIS BOARD IS NOT AWARE OF ANY PURPORTED TRADE UNION WHICH PROVIDES FOR DIFFERENT CLASSES OF MEMBERSHIP, ONE CLASS HAVING INFERIOR RIGHTS AND PRIVILEGES TO THE OTHER OR OTHERS. IN ANY EVENT, THE BOARD WOULD NOT CONFER THE STATUS OF A TRADE UNION UPON ANY ORGANIZATION WITH SUCH A MEMBERSHIP STRUCTURE. APPLIED TO THE INSTANT APPLICATION, BASED SOLELY ON THE MEMBERSHIP LIMITATIONS IMPOSED ON THE MEDICAL TECHNOLOGISTS AND TECHNICIANS FOR WHOM THE APPLICANT IS SEEKING CERTIFICATION, THE BOARD IS NOT PREPARED TO GRANT THE APPLICANT THE STATUS OF A TRADE UNION WITHIN THE MEANING OF SECTION

1(1)(J) OF THE LABOUR RELATIONS ACT (ROSE-LAWN PLASTERING CO. LTD. CASE OLRB M.R. MARCH 1968 P. 1178; KINGSWAY PLASTERING CO. LTD. CASE OLRB M.R. FEBRUARY 1970 P. 1360).

4. COUNSEL FOR THE APPLICANT IN HIS LETTER SUBMITS THAT SUBJECT TO PARAGRAPHS 19 AND 20 OF THE BOARD'S DECISION OF FEBRUARY 19, 1971, THE ONLY MATTER THAT STANDS IN THE WAY OF THE STATUS OF A TRADE UNION IS, ACCORDING TO THE APPLICANT, THE BOARD'S OBJECTION TO THE APPLICANT'S "MEMBERSHIP STRUCTURE" AS SET OUT IN SECTION 3(A) OF THE APPLICANT'S BY-LAW No. 1 WHICH IS QUOTED IN PARAGRAPH 13 OF THE BOARD'S DECISION OF FEBRUARY 19, 1971 AS FOLLOWS:

3. MEMBERSHIP

(A) ELIGIBILITY -

(I) REGULAR MEMBERS: ANY PERSON WHO IS EMPLOYED WITHIN A BARGAINING UNIT FOR WHICH THE ASSOCIATION IS THE BARGAINING AGENT WHO SIGNS AN APPLICATION FOR MEMBERSHIP IN THE FORM APPROVED BY THE BOARD OF DIRECTORS SHALL BE ELIGIBLE FOR AND SHALL BE ADMITTED TO MEMBERSHIP IN THE ASSOCIATION AT THE DISCRETION OF THE BOARD OF DIRECTORS. ACCEPTANCE OF AN APPLICATION FOR MEMBERSHIP SHALL BE DEEMED TO INDICATE THAT THE PERSON WHOSE APPLICATION IS ACCEPTED IS SUBJECT TO THE BY-LAWS AND REGULATIONS OF THE ASSOCIATION. A MEMBERSHIP CARD SHALL BE FORWARDED TO EACH MEMBER CERTIFYING HIS MEMBERSHIP IN THE ASSOCIATION.

(II) PROVISIONAL MEMBERS: ANY PERSON WHO IS EMPLOYED WITHIN A BARGAINING UNIT FOR WHICH THE ASSOCIATION SEEKS RECOGNITION AS THE BARGAINING AGENT WHO SIGNS AN APPLICATION FOR MEMBERSHIP IN THE FORM APPROVED BY THE BOARD OF DIRECTORS AND PAYS THE INITIATION FEE STIPULATED BY THE BOARD OF DIRECTORS SHALL BE ELIGIBLE FOR AND SHALL BECOME A PROVISIONAL MEMBER. A PROVISIONAL MEMBER SHALL BECOME A REGULAR MEMBER ON RECOGNITION OF THE ASSOCIATION AS THE BARGAINING AGENT FOR THE UNIT IN WHICH HE IS EMPLOYED.

(III) LIFE MEMBERS: LIFE MEMBERS SHALL BE RESTRICTED TO THOSE PREVIOUSLY GRANTED SUCH

MEMBERSHIP IN THE ASSOCIATION WHO SHALL RETAIN ALL RIGHTS AND PRIVILEGES HERETOFORE GRANTED TO THEM AS SUCH BUT NO NEW LIFE MEMBERSHIP SHALL BE CREATED.

5. COUNSEL FOR THE APPLICANT HAS BASED HIS REQUEST FOR RECONSIDERATION ON A NUMBER OF GROUNDS WHICH ARE DEALT WITH BELOW.

6. COUNSEL SUBMITS THAT THE BOARD FOUND THE CIVIL SERVICE ASSOCIATION OF ONTARIO (INC.) TO BE A TRADE UNION AND THAT ITS ELIGIBILITY PROVISIONS TO HOLD OFFICE ARE IDENTICAL TO THOSE OF THE APPLICANT. THE BOARD DID IN FACT FIND THE FORMER ORGANIZATION TO BE A TRADE UNION BY A DECISION DATED APRIL 7, 1966 IN THE UNIVERSITY OF GUELPH CASE (BOARD FILE NO. 11476-65-R). THE DIVISION OF THE BOARD SEIZED WITH THE INSTANT APPLICATION HAS NO KNOWLEDGE AS TO THE MEMBERSHIP PROVISIONS AS CONTAINED IN THE BY-LAWS OF THE CIVIL SERVICE ASSOCIATION OF ONTARIO (INC.) ALTHOUGH THE APPLICANT WAS AFFORDED EVERY OPPORTUNITY TO FILE THE BY-LAWS IN EVIDENCE AT THE HEARING OF THIS APPLICATION. FURTHER, THIS DIVISION OF THE BOARD DOES NOT KNOW UPON WHAT BASIS THE DIVISION OF THE BOARD IN THE UNIVERSITY OF GUELPH CASE FOUND THAT THE SAID ASSOCIATION WAS A TRADE UNION WITHIN THE MEANING OF THE ACT. THE DECISION OF APRIL 7, 1966 SIMPLY READS: "HAVING CONSIDERED THE EVIDENCE AND ARGUMENTS PRESENTED AT THE HEARING, THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT."

7. THE APPLICANT IN THE INSTANT CASE IS A DIFFERENT ENTITY FROM THE CIVIL SERVICE ASSOCIATION OF ONTARIO (INC.). INDEED, THE PRESENT APPLICANT WAS INCORPORATED UNDER THE CANADA CORPORATIONS ACT WHEREAS THE CIVIL SERVICE ASSOCIATION OF ONTARIO (INC.) WAS INCORPORATED UNDER THE ONTARIO CORPORATIONS ACT. IN ALL OF THE ABOVE CIRCUMSTANCES, THE FACT THAT THE BOARD CONFERRED THE STATUS OF A TRADE UNION UPON THE CIVIL SERVICE OF ONTARIO (INC.) DOES NOT IPSO FACTO CONFER THE SAME STATUS ON THE PRESENT APPLICANT. THIS APPLICATION IS THE FIRST TIME THAT THE PRESENT APPLICANT HAS APPLIED TO THE BOARD FOR CERTIFICATION. THE BOARD FOLLOWING ITS USUAL PRACTICE CALLED UPON THE APPLICANT TO ESTABLISH ITS STATUS AS A TRADE UNION. THE BOARD PROPERLY MADE ITS DETERMINATION WITH RESPECT TO THE STATUS OF THE APPLICANT SOLELY ON THE BASIS OF THE EVIDENCE ADDUCED AND THE ARGUMENTS ADVANCED AT THE HEARING OF THE APPLICATION.

8. SECTION 3(D)(II) OF BY-LAW NO. 1 QUOTED IN PARAGRAPH 16 OF THE BOARD'S DECISION OF FEBRUARY 19, 1971 READS:

(II) SUBJECT TO ANY QUALIFICATION WHICH MAY BE STIPULATED IN THIS BY-LAW, ANY MEMBER IN GOOD STANDING MAY BE NOMINATED FOR OFFICE AND MAY HOLD ANY OFFICE IN THE ASSOCIATION EXCEPT

IF HE CEASES TO BE EMPLOYED BY ANY EMPLOYER WITH WHOM THE ASSOCIATION HAS BARGAINING RELATIONSHIPS OR IS PROMOTED TO A POSITION EXCLUDED FROM THE ASSOCIATION'S BARGAINING JURISDICTION.

9. THE BOARD INTERPRETED THE SAID SUBSECTION TO MEAN THAT PROVISIONAL MEMBERS ARE BARRED FROM HOLDING ANY OFFICE IN THE APPLICANT. COUNSEL FOR THE APPLICANT IN HIS LETTER OF MARCH 10, 1971 SUBMITS THAT THE BOARD ERRED IN ITS INTERPRETATION OF THE SUBSECTION. MORE PARTICULARLY, COUNSEL ARGUES THAT THE RESTRICTION RELATING TO THE HOLDING OF ANY OFFICE IN THE APPLICANT ONLY APPLIES TO MEMBERS OF THE APPLICANT WHO CEASE TO BE EMPLOYED BY ANY EMPLOYER WITH WHOM THE APPLICANT HAS A BARGAINING RELATIONSHIP. COUNSEL ASSERTS THAT PROVISIONAL MEMBERS AS DEFINED IN SECTION 3(A)(II) OF BY-LAW NO. 1 ARE ANY PERSON WHO IS EMPLOYED WITHIN A BARGAINING UNIT FOR WHICH THE APPLICANT DOES NOT YET HOLD ANY BARGAINING RIGHTS. COUNSEL ARGUES THAT THE DEFINITION OF PROVISIONAL MEMBERS DOES NOT AFFECT THEIR ELIGIBILITY TO HOLD OFFICE AND THAT ACCORDINGLY, AS A MATTER OF INTERPRETATION, THE CLASSES OF MEMBERS IN THE APPLICANT CANNOT BE DIFFERENTIATED BY MEANS OF THE RIGHT TO STAND FOR ELECTIVE OFFICE.

10. THE OPENING WORDS OF SECTION 3(D)(II) OF BY-LAW NO. 1 ARE-- "SUBJECT TO ANY QUALIFICATION WHICH MAY BE STIPULATED IN THIS BY-LAW". THIS INCLUDES ANY QUALIFICATIONS IMPLICIT IN THE DEFINITION OF PROVISIONAL MEMBERS WITH RESPECT TO THEIR ELIGIBILITY TO HOLD OFFICE. AS SET OUT PARAGRAPH 17 OF THE BOARD'S DECISION OF FEBRUARY 19, 1971, THE SECRETARY OF THE APPLICANT IN HER VIVA VOCE TESTIMONY AND THE REPRESENTATIVE OF THE APPLICANT IN BOTH HIS ORAL AND WRITTEN SUBMISSIONS CONFIRMED THE BOARD'S INTERPRETATION OF SECTION 3(D)(II) OF THE BY-LAW. THAT IS TO SAY, THEY BOTH ASSERTED THAT PROVISIONAL MEMBERS ARE PRECLUDED FROM HOLDING ANY OFFICE IN THE APPLICANT UNTIL SUCH TIME AS THE APPLICANT ACQUIRES THE RIGHT TO BARGAIN FOR THEM WITH THEIR EMPLOYER. BECAUSE OF THIS LIMITATION PLACED ON THE CAPACITY OF PROVISIONAL MEMBERS TO HOLD OFFICE, WHETHER OR NOT THEY "CEASE TO BE EMPLOYED BY ANY EMPLOYER WITH WHOM THE ASSOCIATION HAS BARGAINING RELATIONSHIPS" IS NOT RELEVANT. WE ACCORDINGLY REJECT THE SUBMISSION OF COUNSEL FOR THE APPLICANT THAT THE BOARD ERRED IN ITS INTERPRETATION OF SECTION 3(D)(II) OF BY-LAW NO. 1.

11. IN CONSIDERING THE QUESTION OF "ELIGIBILITY" WE WOULD MAKE REFERENCE TO THE CRITERIA WHICH HAVE BEEN APPLIED BY THE BOARD WHICH ARE WELL SUMMARIZED IN THE METROPOLITAN LIFE INSURANCE COMPANY CASE OLRB M.R. AUGUST 1967, P. 437 AT P. 441:

13. UNQUESTIONABLY IN CONSIDERING THE "ELIGIBILITY" PROBLEM, THE BOARD HAS TAKEN INTO CONSIDERATION THE CONSTITUTION OF THE PARTICULAR UNION IN QUESTION. IT

IS ONE OF THE FACTORS WHICH THE BOARD LOOKS AT IN DETERMINING WHETHER A PERSON IS A MEMBER OF THE UNION. THUS, IF THERE IS A CLEAR-CUT PROHIBITION OR EXPRESS EXCLUSION WITH RESPECT TO A CERTAIN CLASS OF PERSONS (SEE CANADIAN CANNERS LIMITED CASE, O.L.R.B. MONTHLY REPORT, MAY 1965, P. 126, ALDRSHOT CONTRACTORS EQUIPMENT RENTAL LIMITED CASE, O.L.R.B. MONTHLY REPORT, JUNE 1965, P. 170), THE BOARD WILL REFUSE TO CERTIFY AN APPLICANT UNION IF THE CLASS OF PERSONS IN QUESTION IS TO BE INCLUDED IN THE BARGAINING UNIT WHICH THE BOARD FINDS TO BE APPROPRIATE FOR COLLECTIVE BARGAINING. THE REASON FOR THIS IS THAT A TRADE UNION IS CERTIFIED AS BARGAINING AGENT FOR ALL EMPLOYEES IN THE BARGAINING UNIT WHICH THE BOARD FINDS TO BE APPROPRIATE AND, IF THE UNION IN QUESTION WILL NOT ADMIT TO MEMBERSHIP ALL OF THE PERSONS FOR WHOM IT WOULD BE CERTIFIED TO REPRESENT, THE BOARD WILL REFUSE CERTIFICATION IN SUCH CIRCUMSTANCES. TO THAT EXTENT AND FOR THAT PURPOSE, THEN, THE BOARD DOES HAVE REGARD TO UNION CONSTITUTIONS.

14. ON THE OTHER HAND, THE BOARD HAS ALSO SAID IF THERE IS NO EXPRESS EXCLUSION (CF. ALDRSHOT CONTRACTORS EQUIPMENT RENTALS LIMITED, SUPRA, N. D. APPLE-GATE LTD. CASE, O.L.R.B. MONTHLY REPORT, MAY 1963, P. 104) OF A PARTICULAR CLASS OR CLASSES OF EMPLOYEES AFFECTED BY THE APPLICATION, IT WILL NOT ENTERTAIN AN OBJECTION TO THE APPLICATION BASED ON THE ELIGIBILITY PROVISIONS OF AN APPLICANT UNION'S CONSTITUTION. IN A CASE OF THIS NATURE THE BOARD MAY ALSO HAVE REGARD TO THE INTERPRETATION WHICH RESPONSIBLE OFFICIALS OF THE UNION HAVE PLACED ON THE PROVISIONS OF THE CONSTITUTION AND TO THE PRACTICE OF THE UNION WITH RESPECT TO THE ADMISSION OF PERSONS AS MEMBERS. SEE WAYNE PUMP CANADA LIMITED, O.L.R.B. MONTHLY REPORT, OCTOBER, 1966, P. 489; JOHN E. RIDDELL AND SON LTD. CASE, 2 C.L.S. 76-564.

15. FURTHERMORE, EVEN WHERE THERE IS AN EXPRESS EXCLUSION IN A UNION CONSTITUTION, IT IS IMPLICIT IN THE CANADIAN CANNERS LIMITED CASE, SUPRA, THAT THE INTERPRETATION PLACED ON THE CONSTITUTION BY THE UNION'S RESPONSIBLE OFFICERS OR PROOF OF UNEQUIVOCAL PAST PRACTICES OF ADMISSION AS MEMBERS OF PERSONS COMING WITHIN THE EXCLUSIONARY CLASS WILL OVERCOME THE LANGUAGE OF THE CONSTITUTION. THERE IS NO DOUBT IN OUR MINDS THAT THIS ACCURATELY REFLECTS BOARD POLICY AND, FURTHER, THAT THE HIGH

SCHOOL BOARD OF EASTVIEW CASE IS IN LINE WITH
THIS POLICY.

16. IN SUM, THEN, IN DETERMINING WHETHER AN APPLICANT TRADE UNION IS CAPABLE OF REPRESENTING ALL THE EMPLOYEES IN AN APPROPRIATE BARGAINING UNIT, WHAT THE BOARD IS CONCERNED WITH IS WHETHER THE UNION ACCORDS ALL SUCH EMPLOYEES FULL RIGHTS AND PRIVILEGES AS MEMBERS. IF THE EVIDENCE SUPPORTS THIS CONCLUSION, THEN THE BOARD IS PREPARED TO FIND THAT SUCH EMPLOYEES ARE ELIGIBLE TO BECOME MEMBERS (AND, DEPENDING ON THE EVIDENCE, THAT THEY ARE MEMBERS) FOR THE PURPOSES OF SECTION 7 OF THE ACT AND, FURTHER, THAT THE TRADE UNION IS CAPABLE OF REPRESENTING ALL THE EMPLOYEES IN THE UNIT. WE HASTEN TO ADD, HOWEVER, THAT IF IT SHOULD SUBSEQUENTLY COME TO LIGHT THAT EMPLOYEES IN THE BARGAINING UNIT ARE NOT BEING ACCORDED FULL STATUS AS MEMBERS OF THE UNION, THEN, NATURALLY, THE BOARD WOULD HAVE TO REVIEW ITS DECISION IN THE PARTICULAR CASE AND WOULD BE OBLIGED TO TAKE THIS INTO ACCOUNT IN SUBSEQUENT CASES. HOWEVER, THE POSSIBILITY THAT THIS MAY OCCUR IN THE FUTURE IS NO GROUND, IN OUR VIEW, FOR WITHHOLDING BARGAINING RIGHTS IN ANY PARTICULAR CASE.

12. BY AN AMENDMENT TO THE LABOUR RELATIONS ACT IN 1970 LEGISLATIVE SANCTION WAS GIVEN TO THE BOARD'S CONSIDERATION OF PAST PRACTICE. SUBSECTION (4) OF SECTION 77 OF THE ACT READS:

WHERE THE BOARD IS SATISFIED THAT A TRADE UNION HAS AN ESTABLISHED PRACTICE OF ADMITTING PERSONS TO MEMBERSHIP WITHOUT REGARD TO THE ELIGIBILITY REQUIREMENTS OF ITS CHARTER, CONSTITUTION OR BY-LAWS, THE BOARD, IN DETERMINING WHETHER A PERSON IS A MEMBER OF A TRADE UNION, NEED NOT HAVE REGARD FOR SUCH ELIGIBILITY REQUIREMENTS.

13. IN THE INSTANT CASE, THE APPLICANT WAS ONLY INCORPORATED BY LETTERS PATENT DATED OCTOBER 16, 1970 AND ACCORDINGLY HAS NO ESTABLISHED PRACTICE WHICH COULD HAVE A MODIFYING EFFECT ON THE LANGUAGE OF SECTION 3 OF BY-LAW No. 1. THE BOARD THEREFORE CAN ONLY LOOK TO THE LANGUAGE OF SECTION 3 AND THE INTERPRETATION PLACED ON THE SECTION BY RESPONSIBLE OFFICERS AND OFFICIALS OF THE APPLICANT. ON THESE BASES THE BOARD FOUND IN ITS DECISION OF FEBRUARY 19, 1971 THAT THE

PROVISIONAL MEMBERS ARE BARRED FROM HOLDING ANY OFFICE IN THE APPLICANT SINCE THEY ARE NOT EMPLOYED BY AN EMPLOYER WITH WHOM THE APPLICANT HAS A BARGAINING RELATIONSHIP.

14. COUNSEL FOR THE APPLICANT ALTERNATIVELY SUBMITS THAT EVEN IF BY IMPOSING CONSTRAINTS ON THE RIGHT OF CERTAIN MEMBERS TO STAND FOR OFFICE THE APPLICANT HAS CREATED "TWO CLASSES" OF MEMBERSHIP, THE BOARD ON THAT GROUND IN THE PAST HAS NEVER DECLINED TO GRANT SUCH AN ORGANIZATION THE STATUS OF A TRADE UNION. COUNSEL ARGUES THAT IN THESE CIRCUMSTANCES THE BOARD DOES NOT NOW HAVE THE RIGHT TO WITHHOLD FROM THE APPLICANT THE STATUS OF A TRADE UNION.

15. IN REPLY, WE WOULD AGAIN REFER TO THE DECISION IN THE METROPOLITAN LIFE INSURANCE COMPANY CASE (SUPRA) IN WHICH IT IS STATED THAT THE BOARD'S CONCERN IN GRANTING AN ORGANIZATION THE STATUS OF A TRADE UNION IS THAT IT ACCORDS ALL MEMBERS FULL RIGHTS AND PRIVILEGES AS MEMBERS. WHERE THIS REQUIREMENT IS NOT MET, THE BOARD HAS CONSISTENTLY DECLINED TO ACCORD THE ORGANIZATION CONCERNED THE STATUS OF A TRADE UNION. IN THE INSTANT CASE, THE BOARD FOUND THAT SINCE THE "CLASS" OF PROVISIONAL MEMBERS COULD NOT HOLD OFFICE WHEREAS THE "CLASS" OF REGULAR MEMBERS COULD DO SO, THE BOARD REFUSED TO RECOGNIZE THE APPLICANT AS A TRADE UNION.

16. COUNSEL FOR THE APPLICANT IN HIS LETTER OF MARCH 10, 1971 SUBMITS THAT PROVISIONS SIMILAR TO THOSE CONTAINED IN SECTION 3 OF BY-LAW No. 1 ARE COMMON TO VIRTUALLY ALL OF THE LARGE NATIONAL AND INTERNATIONAL TRADE UNIONS, ALL OF WHICH HAVE BEEN RECOGNIZED BY THIS BOARD AS BEING TRADE UNIONS WITHIN THE MEANING OF THE ACT. BY WAY OF EXAMPLE, COUNSEL ASKED THAT THE BOARD TAKE NOTE OF SECTION 9(A) OF ARTICLE VII OF THE CONSTITUTION OF THE UNITED STEELWORKERS OF AMERICA. NOTWITHSTANDING THE FACT THAT THE SAID CONSTITUTION WAS NOT FILED IN EVIDENCE AT THE HEARING IN THIS MATTER, IT IS ON FILE WITH THE BOARD. WE ACCORDINGLY ARE PREPARED IN THESE CIRCUMSTANCES TO ACQUIESCE IN THE REQUEST OF COUNSEL. THE CITED PORTION OF THE CONSTITUTION READS:

SECTION 9

NO MEMBER SHALL BE ELIGIBLE FOR ELECTION AS A
LOCAL UNION OFFICER OR GRIEVANCE COMMITTEEMAN
UNLESS

(A) HE SHALL HAVE BEEN IN CONTINUOUS GOOD
STANDING FOR A PERIOD OF TWENTY-FOUR (24) MONTHS
IMMEDIATELY PRECEDING THE ELECTION, OR IF HIS
LOCAL UNION HAS BEEN IN EXISTENCE FOR A LESSER
PERIOD PRIOR TO THE ELECTION, HE MUST HAVE BEEN IN
CONTINUOUS GOOD STANDING FROM THE TIME THAT HE
JOINED SUCH LOCAL UNION;

17. BY THE ABOVE QUOTED PROVISION OF THE CONSTITUTION OF THE UNITED STEELWORKERS OF AMERICA, A MEMBER IN GOOD STANDING FOR A PERIOD OF 24 MONTHS BECOMES ELIGIBLE TO BE ELECTED FOR OFFICE. ON THE OTHER HAND, BY SECTION 3 OF BY-LAW NO. 1 OF THE APPLICANT, A PROVISIONAL MEMBER ONLY BECOMES ELIGIBLE TO HOLD OFFICE AT SUCH TIME AS THE APPLICANT BECOMES THE BARGAINING AGENT FOR THE UNIT IN WHICH HE IS EMPLOYED. IF THIS CONDITION IS MET, A PROVISIONAL MEMBER BECOMES A REGULAR MEMBER AND CAN STAND FOR AND HOLD OFFICE IN THE APPLICANT. SHOULD THE APPLICANT, HOWEVER, CEASE TO HOLD THE BARGAINING RIGHTS FOR THE UNIT IN WHICH AN OFFICE HOLDER IS A MEMBER OR SHOULD THE OFFICE HOLDER FOR ANY REASON CEASE TO BE AN EMPLOYEE IN THE UNIT, THEN, PURSUANT TO SECTION 3(D)(II) THAT OFFICE HOLDER WOULD IMMEDIATELY BE DISQUALIFIED FROM REMAINING IN OFFICE.

18. STATED ANOTHER WAY, UNDER THE CONSTITUTION OF THE UNITED STEELWORKERS OF AMERICA A MEMBER IN GOOD STANDING HAS A RIGHT TO HOLD OFFICE CONFERRED UPON HIM WHICH IS POSTPONED FOR A 24 MONTH PERIOD. IN THE TRIPLE F FORMING CASE OLRB M.R. FEBRUARY 1970 P. 1344, THE BOARD GAVE ITS IMPLICIT APPROVAL TO A PROVISION IN THE CONSTITUTION OF THE APPLICANT UNION REQUIRING THAT A PERSON ENTITLED TO HOLD OFFICE HAD TO BE A MEMBER IN GOOD STANDING FOR A PERIOD OF ONE YEAR. IT DOES NOT SEEM UNREASONABLE TO US THAT SUCH A DEFERMENT SHOULD BE IMPOSED FOR A FURTHER PERIOD OF A YEAR AS IS REQUIRED BY THE CONSTITUTION OF THE UNITED STEELWORKERS OF AMERICA. MOST IMPORTANTLY, HOWEVER, THE DEFERRED BUT EXISTING RIGHT IN THE LATTER CONSTITUTION HAS UNIFORM APPLICATION TO ALL MEMBERS. A QUITE DIFFERENT SITUATION PREVAILS IN THE CASE OF A PROVISIONAL MEMBER OF THE APPLICANT. HIS RIGHT TO HOLD OFFICE IS NOT AN EXISTING, DEFERRED RIGHT. RATHER, HIS RIGHT TO HOLD OFFICE IS A CONTINGENT RIGHT, THE CONTINGENCY BEING THAT THE APPLICANT BECOMES THE BARGAINING AGENT FOR A UNIT IN WHICH THE PROVISIONAL MEMBER IS EMPLOYED. IT IS A CONTINGENCY, MOREOVER, WHICH MAY NEVER COME TO PASS. IN OTHER WORDS, A PROVISIONAL MEMBER CONCEIVABLY COULD NEVER BECOME ELIGIBLE TO HOLD OFFICE IN THE APPLICANT. TO OUR WAY OF THINKING, THIS LIMITATION ON THE ELIGIBILITY OF PROVISIONAL MEMBERS TO HOLD OFFICE IN THE APPLICANT IS NOT A REASONABLE ONE AND OBVIOUSLY CANNOT BE CONSISTENTLY APPLIED IN RELATION TO PROVISIONAL MEMBERS. IN THE RESULT, IT CANNOT BE SAID THAT THE APPLICANT ACCORDS TO ALL OF ITS MEMBERS EQUAL RIGHTS AND PRIVILEGES.

19. WE WOULD MENTION THAT IN SUPPORT OF HIS SUBMISSION SET OUT IN PARAGRAPH 14 OF THIS DECISION, COUNSEL FOR THE APPLICANT CITED THE BOARD'S DECISION IN THE RECORDING & STATISTICAL CORPORATION LIMITED CASE (1963) CLLC ¶16,285. THE FACTS OF THAT CASE AS OUTLINED IN COUNSEL'S LETTER OF MARCH 10, 1971 ARE THAT THE APPLICANT IMPOSED A PENALTY ON ANY MEMBER WHO OBTAINED ELECTIVE OFFICE BY MISREPRESENTING HIMSELF IN REGARD TO MEMBERSHIP INTER ALIA IN THE COMMUNIST PARTY. COUNSEL CONTENDED THAT THE PLAIN INTENT OF THE PRO-

VISION AND ITS EFFECT WAS TO DEPRIVE CERTAIN MEMBERS OF THE APPLICANT, THAT IS, PERSONS WHO WERE MEMBERS OF THE COMMUNIST PARTY, OF THE RIGHT TO HOLD ELECTIVE OFFICE. ACCORDING TO COUNSEL, THE BOARD GRANTED THE APPLICANT THE STATUS OF A TRADE UNION NOTWITHSTANDING THE ABOVE PROVISION AND NOTED THAT THE CONSTITUTION OF THE APPLICANT "DOES NOT DENY MEMBERSHIP IN THE APPLICANT TO ANY PERSON BUT MAY RESTRICT A MEMBER'S FREEDOM OF ACTION". COUNSEL SUBMITS THAT THERE IS NO MATERIAL DISTINCTION BETWEEN THE FACTS IN THE ABOVE CITED CASE AND THOSE IN THE INSTANT CASE.

20. THE RECORDING & STATISTICAL CORPORATION LIMITED CASE (SUPRA) WAS AN APPLICATION FOR CERTIFICATION. THE CONSTITUTION OF THE APPLICANT UNION PRESCRIBED INTER ALIA A PENALTY FOR A MEMBER WHO "WINS" OFFICE IN THE APPLICANT "BY MISREPRESENTING HIMSELF IN REGARD TO MEMBERSHIP IN THE COMMUNIST PARTY, ANY FACIST GROUP, OR ANY TOTALITARIAN MOVEMENT". WE WOULD POINT OUT THAT THE SAID CONSTITUTION DID NOT IMPOSE ANY LIMITATION ON THE ELIGIBILITY OF AN APPLICANT FOR MEMBERSHIP NOR DID IT DENY ANY MEMBER THE RIGHT TO HOLD OFFICE BY REASON OF MEMBERSHIP IN THE COMMUNIST PARTY OR A FACIST GROUP. RATHER, THE CONSTITUTION ONLY PROVIDED FOR A PENALTY IF A MEMBER OF THE APPLICANT WON OFFICE BY MISREPRESENTATION THAT HE WAS NOT AFFILIATED WITH ONE OF THE SPECIFIED ORGANIZATIONS. THIS IS QUITE UNLIKE THE FACT SITUATION BEFORE US IN THE INSTANT CASE WHERE THERE IS A BAR IMPOSED ON ONE CLASS OF MEMBERS HOLDING OFFICE WHICH IS NOT IMPOSED ON ANOTHER CLASS OF MEMBERS. ACCORDINGLY, WE FIND THAT THE RECORDING & STATISTICAL CORPORATION LIMITED CASE IS READILY DISTINGUISHABLE. WE THEREFORE REJECT THE ASSERTION OF COUNSEL THAT THERE IS NO MATERIAL DISTINCTION BETWEEN THE TWO CASES.

21. HAVING REGARD TO ALL OF THE FOREGOING, THE REQUEST OF COUNSEL FOR THE APPLICANT AS CONTAINED IN HIS LETTER OF MARCH 10, 1971, THAT THE BOARD RECONSIDER ITS DECISION OF FEBRUARY 19, 1971 AND FIND THE APPLICANT TO BE A TRADE UNION WITHIN THE MEANING OF THE LABOUR RELATIONS ACT, IS HEREBY DENIED.

CASE LISTINGS APRIL 1971

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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING APRIL 1971

BARGAINING AGENTS CERTIFIED DURING APRIL

NO VOTE CONDUCTED

18401-70-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. METROPOLITAN SEPARATE SCHOOL BOARD (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF METROPOLITAN SEPARATE SCHOOL BOARD IN METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, EMPLOYEES COVERED BY THE CERTIFICATE DATED APRIL 22, 1970 ISSUED BY THE ONTARIO LABOUR RELATIONS BOARD TO THE CANADIAN UNION OF PUBLIC EMPLOYEES, PERSONS EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (284 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

18847-70-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE TOWN OF HESPELER (RESPONDENT) V. LOCAL UNION 804 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (INTERVENER) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT SUPERINTENDENT AND PERSONS ABOVE THE RANK OF SUPERINTENDENT, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (10 EMPLOYEES IN THE UNIT). (THE BOARD NOTED THE AGREEMENT OF THE PARTIES TO THE EFFECT THAT THOSE EMPLOYEES COVERED BY A SUBSISTING COLLECTIVE AGREEMENT DATED APRIL 1, 1970, ENTERED INTO BETWEEN THE HYDRO ELECTRIC POWER COMMISSION OF THE TOWN OF HESPELER AND LOCAL UNION 804 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, ARE NOT EMPLOYEES OF THE RESPONDENT AND THEREFORE ARE EXCLUDED FROM THE BARGAINING UNIT). (THE BOARD NOTED THE FURTHER AGREEMENT OF THE PARTIES TO THE EFFECT THAT ALL EMPLOYEES IN THE BOARD OF WORKS AND WATER WORKS DEPARTMENTS ARE INCLUDED IN THE BARGAINING UNIT).

(SEE DECISION [1971] OLRB REP. 190).

18866-70-R: BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 478, AFL-CIO-CLC (APPLICANT) V. THE MUSKOKA BOARD OF EDUCATION (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS, SAVE AND EXCEPT SUPERVISORS AND PERSONS ABOVE THE

RANK OF SUPERVISOR, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (56 EMPLOYEES IN THE UNIT).

18902-70-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 749 (APPLICANT) V. MALLORY HARDWARE PRODUCTS LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT THE TOWNSHIP OF HARWICH, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (30 EMPLOYEES IN THE UNIT). (FOR THE PURPOSE OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT TRAINEES ON A REHABILITATION PROGRAM WITH THE ONTARIO HOSPITAL ARE NOT INCLUDED IN THE BARGAINING UNIT).

(SEE DECISION [1971] OLRB REP. 195).

18921-70-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. MACLAREN HOUSE NURSING HOME (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OTTAWA, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, REGISTERED AND GRADUATE NURSES, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (36 EMPLOYEES IN THE UNIT). (FOR PURPOSES OF CLARITY, THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT ALL OF THE REGISTERED NURSING ASSISTANTS IN THE EMPLOY OF THE RESPONDENT ARE INCLUDED IN THE BARGAINING UNIT WITH THE EXCEPTION OF THE REGISTERED NURSING ASSISTANT DESIGNATED AS SUPERVISOR OF THE NIGHT SHIFT WHO IS EXCLUDED FROM THE BARGAINING UNIT).

18989-70-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION NO. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. A.B.C. AMBULANCE SERVICES LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, AND OFFICE STAFF." (25 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

53-70-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 93 (APPLICANT) V. KINELL FORMING LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF

THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (13 EMPLOYEES IN THE UNIT).

95-70-R: CANADIAN UNION OF GENERAL EMPLOYEES (APPLICANT) V. TEKPAK AUTOMATED SYSTEMS LIMITED (RESPONDENT) V. EMPLOYEE (OBJECTOR).

UNIT: "ALL OFFICE STAFF EMPLOYED BY THE RESPONDENT AT 29 RANGEMORE ROAD, TORONTO, SAVE AND EXCEPT SALESMEN, SUPERVISORS, PERSONS ABOVE THE RANK OF SALESMAN AND SUPERVISOR AND WAREHOUSEMEN PERSONNEL." (4 EMPLOYEES IN THE UNIT).

113-70-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. DOLENTE CONCRETE & DRAIN CO. (1969) (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT WITHIN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND CONSTRUCTION LABOURERS ENGAGED IN BUILDING PROJECTS." (8 EMPLOYEES IN THE UNIT).

141-70-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE TOWNSHIP OF KING (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF KING, SAVE AND EXCEPT ROAD SUPERINTENDENT, PERSONS ABOVE THE RANK OF ROAD SUPERINTENDENT, OFFICE, CLERICAL AND TECHNICAL STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (18 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

142-70-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE TOWNSHIP OF KING (RESPONDENT).

UNIT: "ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF KING, SAVE AND EXCEPT THE CLERK-TREASURER AND DEPUTY-TREASURER AND PERSONS ABOVE THE RANK OF CLERK-TREASURER AND DEPUTY-TREASURER AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (8 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

152-70-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE CITY OF ST. THOMAS (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT REGULARLY EMPLOYED FOR NOT MORE THAN 20 HOURS PER WEEK, SAVE AND EXCEPT DEPUTY DEPARTMENT HEADS,

FOREMEN, PERSONS ABOVE THE RANKS OF DEPUTY DEPARTMENT HEAD AND FOREMAN, STUDENTS EMPLOYED ON A CO-OPERATIVE TRAINING PROGRAM WITH A UNIVERSITY AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENTS BETWEEN THE RESPONDENT AND LOCAL 35 AND LOCAL 841 OF THE CANADIAN UNION OF PUBLIC EMPLOYEES." (13 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT AND THE REPRESENTATIONS OF THE PARTIES).

153-70-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. M. SULLIVAN & SONS LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN PRINCE EDWARD COUNTY AND THE TOWNSHIPS OF LAKE, TUDOR, GRIMSTHORPE, MARMORA, MADOC, ELZEVIR, RAWDON, HUNTINGDON, HUNGERFORD, SIDNEY, THURLOW AND TYENDINAGA IN THE COUNTY OF HASTINGS AND THE TOWNSHIPS OF PERCY, SEYMOUR, CRAMAHE, BRIGHTON AND MURRAY IN THE COUNTY OF NORTHUMBERLAND ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

162-70-R: WILLOCK TRUCK EQUIPMENT CO. LTD. EMPLOYEES' ASSOCIATION (APPLICANT) V. WILLOCK TRUCK EQUIPMENT CO. LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OAKVILLE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (13 EMPLOYEES IN THE UNIT).

163-70-R: LABORER'S INTERNATIONAL UNION OF NORTH AMERICA LOCAL 247 (APPLICANT) V. KONVEY CONSTRUCTION COMPANY LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN PRINCE EDWARD COUNTY AND THE TOWNSHIPS OF LAKE, TUDOR, GRIMSTHORPE, MARMORA, MADOC, ELZEVIR, RAWDON, HUNTINGDON, HUNGERFORD, SIDNEY, THURLOW AND TYENDINAGA IN THE COUNTY OF HASTINGS AND THE TOWNSHIPS OF PERCY, SEYMOUR, CRAMAHE, BRIGHTON AND MURRAY IN THE COUNTY OF NORTHUMBERLAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (19 EMPLOYEES IN THE UNIT).

(SEE DECISION [1971] OLRB REP. 213).

166-70-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. L'ABBE CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES AND ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT WORKING AT OR OUT OF HEARST, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (16 EMPLOYEES IN THE UNIT). (THE BOARD NOTED THE

AGREEMENT OF THE PARTIES AND DECLARES FOR THE PURPOSES OF CLARITY THAT WATCHMEN ARE INCLUDED IN THE BARGAINING UNIT).

167-70-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. BABCOCK & WILCOX CANADA LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN. (2 EMPLOYEES IN THE UNIT).

174-70-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES LOCAL UNION No. 647, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. EASTWOOD FOOD SERVICES LIMITED (RESPONDENT).

UNIT: "ALL SERVICEMEN AND ROUTEMEN OF THE VENDING DIVISION OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT SHOP FOREMAN, ROUTE SUPERVISOR, PERSONS ABOVE THE RANK OF SHOP FOREMAN OR ROUTE SUPERVISOR, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (12 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

175-70-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. N. MORISSETTE DIAMOND DRILLING LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN ITS DIAMOND BIT DIVISION AT 560 BROWNING STREET, HAILEYBURY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (16 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT AND THE REPRESENTATIONS OF THE PARTIES).

177-70-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. SUNDOWN CONSTRUCTION LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

179-70-R: INTERNATIONAL UNION OF DISTRICT 50, ALLIED AND TECHNICAL WORKERS OF THE UNITED STATES AND CANADA (APPLICANT) V. ERCONA ADHESIVES LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (7 EMPLOYEES IN THE UNIT).

181-70-R: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNION 1687 (APPLICANT) V. CURRENT ELECTRIC COMPANY LIMITED (RESPONDENT).

UNIT: "ALL ELECTRICIANS AND ELECTRICIANS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY MILE RADIUS OF THE NORTH BAY POST OFFICE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

192-70-R: LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837 (APPLICANT) V. BALDASARO AND MCGREGOR LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WENTWORTH AND THE TOWNSHIP OF NASSAGAWEYA AND THE TOWN OF BURLINGTON IN THE COUNTY OF HALTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

194-70-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. IMPERIAL SCHOOL DESKS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PETROLIA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (11 EMPLOYEES IN THE UNIT).

198-70-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. VILLACENTRES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT BAYVIEW VILLA IN METROPOLITAN TORONTO, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (92 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED

THAT THE TERM TECHNICAL PERSONNEL COMPRISES PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, ELECTRO-ENCEPHALOGRAPHISTS, ELECTRICAL SHOCK THERAPISTS, LABORATORY, RADIOLOGICAL, PATHOLOGICAL AND CARDIOLOGICAL TECHNICIANS).

202-70-R: METROPOLITAN MEAT PACKERS EMPLOYEE ASSOCIATION (APPLICANT) V. METROPOLITAN MEAT PACKERS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (46 EMPLOYEES IN THE UNIT).

203-70-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL UNION #494 (APPLICANT) V. McCALL CONTRACTORS LIMITED (RESPONDENT) V. LABORERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL UNION #625 (INTERVENER).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF ESSEX AND KENT, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE GREATER WINDSOR GRADING, PAVING, SEWER AND WATERMAIN CONTRACTORS' ASSOCIATION AND A COUNCIL OF TRADE UNIONS ACTING AS THE REPRESENTATIVE OF, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL 880, AND LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 625." (5 EMPLOYEES IN THE UNIT).

205-70-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL UNION 93 (APPLICANT) V. TRIST CONSTRUCTION CO. LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

207-70-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL UNION 1669 (APPLICANT) V. DICK J. MAAT (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF THUNDER BAY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

208-70-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 93 (APPLICANT) V. TREND FLOORING & SUPPLIES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN THE INSTALLATION OF RESILIENT AND HARDWOOD FLOOR LAYING IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (11 EMPLOYEES IN THE UNIT).

209-71-R: CANADIAN TRANSPORTATION WORKERS UNION 188 NATIONAL COUNCIL OF CANADIAN LABOUR (APPLICANT) V. LAIDLAW TRANSPORT LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING IN AND OUT OF ITS TERMINALS AT INGERSOLL, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, DISPATCHERS, OFFICE STAFF, MECHANICS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (13 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

210-71-R: CANADIAN TRANSPORTATION WORKERS UNION 188 NATIONAL COUNCIL OF CANADIAN LABOUR (APPLICANT) V. LAIDLAW TRANSPORT LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING IN AND OUT OF ITS CHATHAM TERMINALS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, DISPATCHERS, OFFICE STAFF, MECHANICS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (9 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

214-71-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. H. TEEUWSEN CONSTRUCTION (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WENTWORTH AND THE TOWNSHIP OF NASSAGAWEYA AND THE TOWN OF BURLINGTON IN THE COUNTY OF HALTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

236-71-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. ACKLANDS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SAULT STE. MARIE, SAVE AND EXCEPT BRANCH MANAGER, OFFICE SUPERVISOR, PERSONS ABOVE THE RANK OF BRANCH MANAGER AND OFFICE SUPERVISOR, AND OUTSIDE SALESMEN." (6 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES).

237-71-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. EASTERN CONSTRUCTION CO. LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN PRINCE EDWARD COUNTY AND THE TOWNSHIPS OF LAKE, TUDOR, GRIMSTHORPE, MARMORA, MADOC, ELZEVIR, RAWDON, HUNTINGDON, HUNGERFORD, SIDNEY, THURLOW AND TYENDINAGA IN THE COUNTY OF HASTINGS AND THE TOWNSHIPS OF PERCY, SEYMOUR, CRAMAHE, BRIGHTON AND MURRAY IN THE COUNTY OF NORTHUMBERLAND ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

239-71-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE BOARD OF PARK MANAGEMENT OF THE CORPORATION OF THE CITY OF GUELPH (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT GUELPH, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (24 EMPLOYEES IN THE UNIT).

247-71-R: READY-MIX, BUILDING SUPPLY, HYDRO & CONSTRUCTION DRIVERS, WAREHOUSEMEN & HELPERS, TEAMSTERS LOCAL UNION NO. 230 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. RELIABLE BUILDERS SUPPLIES (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (15 EMPLOYEES IN THE UNIT).

249-71-R: CANADIAN TRANSPORTATION WORKERS UNION 188 NATIONAL COUNCIL OF CANADIAN LABOUR (APPLICANT) V. LAIDLAW TRANSPORT LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING IN AND OUT OF ITS LEAMINGTON TERMINAL, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, DISPATCHERS, OFFICE STAFF, MECHANICS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (16 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

268-71-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. DERAY CRANE LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF

ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

269-71-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. HANK BROUWER CONSTRUCTION LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS, CARPENTERS' APPRENTICES AND ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WENTWORTH AND THE TOWNSHIP OF NASSAGAWEYA AND THE TOWN OF BURLINGTON IN THE COUNTY OF HALTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (10 EMPLOYEES IN THE UNIT).

273-71-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1190 (APPLICANT) V. D'AMATO CONSTRUCTION CO. LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (23 EMPLOYEES IN THE UNIT).

274-71-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. BROOKSIDE-PRICE'S DAIRY (TRENT-QUINTE) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BRIGHTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, DAIRY BAR EMPLOYEES, OFFICE STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (6 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

275-71-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. 234689 CONSTRUCTION LIMITED OPERATING AS PEEL CRANE RENTAL & ERECTION COMPANY (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME,

SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

277-71-R: INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS (APPLICANT) V. COLT INDUSTRIES (CANADA) LTD., FAIRBANKS MORSE DIVISION (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE AND SALES STAFF." (8 EMPLOYEES IN THE UNIT).

288-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. CARROLL-SHARP CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT WITHIN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTRUCTION LABOURERS ENGAGED IN BUILDING PROJECTS, AND SHOP AND YARD EMPLOYEES." (10 EMPLOYEES IN THE UNIT).

289-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. TEMAR CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT WITHIN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND CONSTRUCTION LABOURERS ENGAGED IN BUILDING PROJECTS." (3 EMPLOYEES IN THE UNIT).

294-71-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 93 (APPLICANT) V. CHARLES NICOL CONSTRUCTION (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (9 EMPLOYEES IN THE UNIT).

(SEE DECISION [1971] OLRB REP. 217).

307-71-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, (APPLICANT) V. GREAT LAKES STEEL PRODUCTS LIMITED (RESPONDENT) V. INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRON WORKERS,

LOCAL 759 (INTERVENER).

UNIT #1: "ALL MILLWRIGHTS AND MILLWRIGHTS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF RAINY RIVER, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

UNIT #2: "ALL MILLWRIGHTS AND MILLWRIGHTS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF THUNDER BAY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

APPLICATION CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

68-70-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE UNIVERSITY OF GUELPH (RESPONDENT) V. CANADIAN UNION OF OPERATING ENGINEERS AND ITS LOCAL 104 (INTERVENER #1) V. CIVIL SERVICE ASSOCIATION OF ONTARIO (INC.) (INTERVENER #2).

UNIT: "ALL TRADES, SERVICES AND MAINTENANCE EMPLOYEES OF THE RESPONDENT EMPLOYED OR NORMALLY PERFORMING A MAJOR PART OF THEIR WORK AT ITS CAMPUS AT GUELPH, SAVE AND EXCEPT SUPERVISORS, FOREMEN, ASSISTANT FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR, FOREMAN OR ASSISTANT FOREMAN, CHIEF FIRE PREVENTION OFFICER, DEPUTY CHIEF FIRE PREVENTION OFFICER, PERSONS ENGAGED IN FOOD SERVICES, PERSONS ENGAGED IN AGRICULTURAL WORK, PERSONS COVERED BY THE ONTARIO LABOUR RELATIONS BOARD'S CERTIFICATE DATED DECEMBER 15TH, 1965, ISSUED TO THE CANADIAN GUARDS ASSOCIATION, PERSONS COVERED BY THE BOARD'S CERTIFICATED DATED MARCH 17TH, 1966, ISSUED TO THE CANADIAN UNION OF OPERATING ENGINEERS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS." (425 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		418
NUMBER OF PERSONS WHO CAST BALLOTS		350
NUMBER OF SPOILED BALLOTS	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT		319
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER #2		30

APPLICATION CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

54-70-R: LITHOGRAPHERS AND PHOTOENGRAVERS INTERNATIONAL UNION, LOCAL 224, OTTAWA, ONTARIO (APPLICANT) V. THE RUNGE PRESS LIMITED (RESPONDENT) V. OTTAWA JOB PRINTERS' ASSOCIATION, LOCAL NO. 1 AFFILIATED WITH THE NATIONAL COUNCIL OF CANADIAN LABOUR (INTERVENER).

UNIT: "ALL PRINTING TRADE WORKERS OF THE RESPONDENT AT OTTAWA, SAVE AND EXCEPT GENERAL FOREMEN, PERSONS ABOVE THE RANK OF GENERAL FOREMAN, MAINTENANCE EMPLOYEES AND OFFICE STAFF." (67 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	72
NUMBER OF PERSONS WHO CAST BALLOTS	71
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	39
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	32

APPLICATIONS FOR CERTIFICATION DISMISSED DURING APRIL

NO VOTE CONDUCTED

18446-70-R: MAURICE GIROUX, SYNDICATE DES JOURNALISTES DE MONTREAL (SECTION LE CARILLON) (APPLICANT) V. PRESCOTT & RUSSELL PRINTING LTD. (RESPONDENT). (3 EMPLOYEES).

18798-70-R: INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA, AFL-CIO, CLC (APPLICANT) V. SEVEN-UP (ONTARIO) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, ROUTE SUPERVISORS, PERSONS ABOVE THE RANKS OF FOREMAN AND ROUTE SUPERVISOR, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (93 EMPLOYEES IN THE UNIT).

(SEE DECISION [1971] OLRB REP. 187).

18851-70-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. CANADA-WIDE PARKING SERVICES (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (87 EMPLOYEES).

69-70-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. EASTHOLME (RESPONDENT). (11 EMPLOYEES).

84-70-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRON WORKERS, LOCAL 759 (APPLICANT) V. CRITTALL-FENESTRA LIMITED (RESPONDENT). (3 EMPLOYEES).

140-70-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. THE BEAVER FURNITURE COMPANY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (52 EMPLOYEES).

146-70-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. BROOKSIDE-PRICE'S DAIRY (TRENT-QUINTE) LIMITED (RESPONDENT). (76 EMPLOYEES).

178-70-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1747, AFFILIATED WITH THE CARPENTERS' DISTRICT COUNCIL OF TORONTO AND VICINITY (APPLICANT) V. ALGOMA DRYWALL & ACOUSTIC LTD. (RESPONDENT). (12 EMPLOYEES).

193-70-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. CARROLL-SHARP CONSTRUCTION LIMITED (RESPONDENT). (7 EMPLOYEES).

215-71-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRON WORKERS, LOCAL 759 (APPLICANT) V. HENDERSON GLASS (LAKEHEAD) LIMITED (RESPONDENT). (3 EMPLOYEES).

278-71-R: INTERNATIONAL UNION OF DISTRICT 50, ALLIED AND TECHNICAL WORKERS OF THE UNITED STATES AND CANADA (APPLICANT) V. STEPHENS-ADAMSON MFG. CO. OF CANADA LIMITED (RESPONDENT). (73 EMPLOYEES).

290-71-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. VERSAFOOD SERVICES LIMITED (RESPONDENT). (163 EMPLOYEES)

296-71-R: TEAMSTERS LOCAL UNION 879 (APPLICANT) V. AIKEN & MACLACHLAN OPERATED BY PERMA-MIX LIMITED (RESPONDENT). (8 EMPLOYEES).

CERTIFICATION DISMISSED SUBSEQUENT TO PRE-HEARING VOTE

42-70-R: SERVICE EMPLOYEES UNION, LOCAL 210 (APPLICANT) V. THE BOARD OF TRUSTEES OF THE ROMAN CATHOLIC SEPARATE SCHOOLS FOR THE CITY OF WINDSOR (RESPONDENT).

VOTING CONSTITUENCY: "ALL PRINCIPAL'S SECRETARIES OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR AND PERSONS COVERED BY SUBSISTING COLLECTIVE AGREEMENTS WITH SERVICE EMPLOYEES UNION, LOCAL 210." (47 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON VOTERS'

LIST

48

NUMBER OF PERSONS WHO CAST BALLOTS

45

NUMBER OF BALLOTS MARKED IN FAVOUR
OF APPLICANT

19

NUMBER OF BALLOTS MARKED AGAINST
APPLICANT

26

89-70-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. THOMPSON PRODUCTS LIMITED (RESPONDENT) V. THOMPSON PRODUCTS EMPLOYEES' ASSOCIATION (INTERVENER).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT ITS ST. CATHARINES PLANTS, SAVE AND EXCEPT SALARIED EMPLOYEES." (893 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	930
NUMBER OF PERSONS WHO CAST BALLOTS	919
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	245
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	674

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

18565-70-R: LOCAL UNION 636 INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (AFL-CIO-CLC) (APPLICANT) V. NEWMARKET HYDRO ELECTRIC COMMISSION (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT NEWMARKET, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (5 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	5
NUMBER OF PERSONS WHO CAST BALLOTS	5
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	0
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	5

18877-70-R: LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220 S.E.I.U., A.F. of L., C.I.O., C.L.C. (APPLICANT) V. THE HURON-PERTH COUNTY ROMAN CATHOLIC SEPARATE SCHOOL BOARD (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN MAINTENANCE AND PLANT OPERATIONS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (17 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		16
NUMBER OF PERSONS WHO CAST BALLOTS	16	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	0	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	16	

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING APRIL

105-70-R: CARPENTERS' DISTRICT COUNCIL OF TORONTO & VICINITY, ON BEHALF OF LOCAL UNIONS 27, 1963 AND 1133; UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. PATRAM CONSTRUCTION LIMITED (RESPONDENT). (34 EMPLOYEES).

161-70-R: CANADIAN UNION OF CONSTRUCTION WORKERS (C.N.T.U.) (APPLICANT) V. SCHWENGER CONSTRUCTION LIMITED (RESPONDENT). (19 EMPLOYEES).

285-71-R: GENERAL TRUCK DRIVERS' UNION LOCAL 938 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. ELLWOOD ROBINSON LTD. (RESPONDENT) V. ALGOMA CONSTRUCTION WORKERS UNION (INTERVENER). (33 EMPLOYEES).

303-71-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 93 (APPLICANT) V. TERON CONSTRUCTION CO. LIMITED (RESPONDENT). (NO EMPLOYEES).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED

OF DURING APRIL

18984-70-R: EMPLOYEES OF WATERLOO METAL STAMPINGS LTD. (APPLICANTS) V. INTERNATIONAL UNION OF DOLL AND TOY WORKERS OF THE UNITED STATES & CANADA (RESPONDENT) V. WATERLOO METAL STAMPINGS LTD. (INTERVENER). (GRANTED).

UNIT: "ALL EMPLOYEES OF WATERLOO STAMPINGS LTD. AT 501 MANITOU DRIVE, KITCHENER, SAVE AND EXCEPT ASSISTANT FOREMEN, PERSONS ABOVE THE RANK OF ASSISTANT FOREMAN, OFFICE STAFF, SALES STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (70 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		59
NUMBER OF PERSONS WHO CAST BALLOTS	59	
NUMBER OF SPOILED BALLOTS	2	
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	6	
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	51	

32-70-R: OUELLETTE & ROCHEFORT LTD. (APPLICANT) V. UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 2486 (RESPONDENT). (6 EMPLOYEES). (DISMISSED).

(SEE DECISION [1971] OLRB REP. 218).

50-70-R: LAWRENCE DEGAN (APPLICANT) V. LOCAL NO. 9 OF THE INTERNATIONAL LEATHER GOODS, PLASTICS AND NOVELTY WORKERS' UNION, AFL-CIO-CLC (RESPONDENT) V. COMPO RECORDS (ONTARIO) LTD. (INTERVENER). (GRANTED).

UNIT: "ALL EMPLOYEES IN THE BARGAINING UNIT DESCRIBED IN THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER WHICH EXPIRES ON MARCH 31, 1971, NAMELY, ALL OF THE EMPLOYEES OF COMPO RECORDS (ONTARIO) LIMITED AT ITS CORNWALL PLANT INCLUDED IN THE WAGE CLASSIFICATIONS LISTED IN THE SAID COLLECTIVE AGREEMENT." (367 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		320
NUMBER OF PERSONS WHO CAST BALLOTS	263	
NUMBER OF SPOILED BALLOT	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	8	
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	254	

98-70-R: CLARENCE MOORE (APPLICANT) V. CANADIAN UNION OF OPERATING ENGINEERS LOCAL 104 (RESPONDENT). (1 EMPLOYEE). (GRANTED).

APPLICATION FOR DECLARATION OF SUCCESSOR STATUS DISPOSED OF DURING

APRIL

135-70-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL UNION 837 (APPLICANT) V. JOURNEYMEN STONE CUTTERS ASSOCIATION OF NORTH AMERICA, HAMILTON, ONTARIO (RESPONDENT). (GRANTED).

APPLICATION FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURINGAPRIL

170-70-U: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (APPLICANT) V. UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL 46 AND ERNEST HEELEY AND MICHAEL GALLANT (RESPONDENTS). (DISMISSED).

APPLICATION FOR DECLARATION THAT LOCK-OUT UNLAWFUL DISPOSED OF DURINGAPRIL

172-70-U: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS' LOCAL UNION 1687 (APPLICANT) V. CANADIAN INTERNATIONAL COMSTOCK COMPANY LIMITED (RESPONDENT). (DISMISSED).

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING APRIL

79-70-U: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION NO. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. A.B.C. AMBULANCE SERVICES LIMITED, JOHN J. JACOBS, HELEN ISABEL HYLAND AND DR. N. GARY LEACH (RESPONDENTS). (WITHDRAWN).

169-70-U: THE INTERNATIONAL UNION UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL WORKERS OF AMERICA, LOCALS 27 AND 1525 (UAW) (APPLICANTS) V. NORTHERN ELECTRIC COMPANY LIMITED (RESPONDENT). (WITHDRAWN).

183-70-U: RALPH M. PARSONS CONSTRUCTION CO. OF CANADA LIMITED (APPLICANT) V. JIM CHALMERS ET AL (RESPONDENT). (WITHDRAWN).

185-70-U: RALPH M. PARSONS CONSTRUCTION CO. OF CANADA LIMITED (APPLICANT) V. JEAN JACQUES ET AL (RESPONDENTS). (WITHDRAWN).

189-70-U: RALPH M. PARSONS CONSTRUCTION CO. OF CANADA LIMITED (APPLICANT) V. ROBERT TAMBEAU, ET AL (RESPONDENTS). (WITHDRAWN).

281-71-U: OFFICE & PROFESSIONAL EMPLOYEES' INTERNATIONAL UNION, LOCAL NUMBER 81 (APPLICANT) V. CANADIAN CAR FOR T WILLIAM DIVISION OF HAWKER SIDDELEY CANADA LIMITED (RESPONDENT). (WITHDRAWN).

APPLICATION FOR CONSENT TO PROSECUTE (HOSPITAL ARBITRATION ACT)

DISPOSED OF DURING APRIL

9-70-PH: THE CANADIAN UNION OF OPERATING ENGINEERS - LOCAL 101 (APPLICANT) v. (THE CORPORATION OF) THE BOARD OF GOVERNORS OF THE RIVERDALE HOSPITAL (RESPONDENT). (WITHDRAWN).

COMPLAINTS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE) DISPOSED OF

DURING APRIL

18824-70-U: CANADIAN UNION OF PUBLIC EMPLOYEES (COMPLAINANT) v. THE ESSEX COUNTY BOARD OF EDUCATION (RESPONDENT). (DISMISSED).

18922-70-U: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (COMPLAINANT) v. NICKLESON TOOL AND DIE COMPANY LIMITED (RESPONDENT). (DISMISSED).

(SEE DECISION [1971] OLRB REP. 225).

18981-70-U: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (COMPLAINANT) v. LUCKNOW FURNITURE COMPANY (RESPONDENT). (GRANTED).

17-70-U: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (COMPLAINANT) v. LUCKNOW FURNITURE COMPANY (RESPONDENT). (DISMISSED).

43-70-U: CANADIAN UNION OF OPERATING ENGINEERS (COMPLAINANT) v. THE SISTERS OF ST. JOSEPH OF THE DIOCESE OF LONDON IN ONTARIO, OPERATING ST. JOSEPH'S HOSPITAL AT SARNIA, ONTARIO (RESPONDENT). (WITHDRAWN).

45-70-U: MR. GORDON WRIGHT OF 50 GILDEA ST., HAMILTON, ONTARIO (COMPLAINANT) v. MR. RAYMOND GRAHAM MITCHELL, OWNER OF FLEETVIEW SERVICES LIMITED OPERATING FLEETWOOD AMBULANCE AT 87 LOCKE ST. S., HAMILTON 12, ONTARIO (RESPONDENT). (GRANTED).

80-70-U: RETAIL CLERKS INTERNATIONAL ASSOCIATION (COMPLAINANT) v. ADAMS FURNITURE CO. LIMITED (RESPONDENT). (DISMISSED).

90-70-U: LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, S.E.I.U. (COMPLAINANT) v. THE SISTERS OF ST. JOSEPH OF THE DIOCESE OF LONDON IN ONTARIO, AS THE OWNER AND OPERATOR OF ST. JOSEPH'S HOSPITAL, LONDON, ONTARIO (RESPONDENT). (WITHDRAWN).

107-70-U: CANADIAN UNION OF PUBLIC EMPLOYEES (COMPLAINANT) v. TRADEWOODS MANOR NURSING HOME LIMITED (RESPONDENT). (WITHDRAWN).

137-70-U: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL UNION No. 141 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (COMPLAINANT) V. PATTON'S PLACE LTD. (RESPONDENT). (WITHDRAWN).

APPLICATION FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT

246-71-M: BOOT AND SHOE WORKERS UNION, AFFILIATED WITH THE CANADIAN LABOUR CONGRESS AND THE A.F.L. - C.I.O. (TRADE UNION) V. SUSAN SHOE INDUSTRIES LIMITED (COMPANY). (GRANTED).

APPLICATION UNDER SECTION 47A DISPOSED OF DURING APRIL

17608-70-M: LOCAL 556, THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (APPLICANT) V. THE REGIONAL MUNICIPALITY OF NIAGARA, THE BOARD OF WATER COMMISSIONERS OF THE CITY OF WELLAND, UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) AND CANADIAN UNION OF PUBLIC EMPLOYEES (RESPONDENTS).

UNIT: "ALL EMPLOYEES OF THE REGIONAL MUNICIPALITY OF NIAGARA IN THE WATER DIVISION AND THE POLLUTION CONTROL DIVISION OF THE PUBLIC WORKS DEPARTMENT ENGAGED IN SERVICES AND PLANT OPERATIONS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND EMPLOYEES REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK."

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		117
NUMBER OF PERSONS WHO CAST BALLOTS	117	
BALLOTS SEGREGATED AND NOT COUNTED	0	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	7	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF RESPONDENT CANADIAN UNION OF		
PUBLIC EMPLOYEES	110	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF LOCAL 1007 (CUPE)	0	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF LOCAL 714 (CUPE)	0	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF LOCAL 133 (CUPE)	0	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF LOCAL 155 (CUPE)	0	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF LOCAL 150 (CUPE)	0	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF LOCAL 157 (CUPE)	0	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF LOCAL 1115 (CUPE)	0	

JURISDICTIONAL DISPUTE

164-70-JD: CANADIAN UNION OF OPERATING ENGINEERS - LOCAL 101 (COMPLAINANT) V. TORONTO GENERAL HOSPITAL (RESPONDENT). (WITHDRAWN).

APPLICATIONS FOR DETERMINATION UNDER SECTION 79(2) DISPOSED OF DURING

APRIL

18647-70-M: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. AGILIS CORPORATION LIMITED (RESPONDENT).

(SEE DECISION [1971] OLRB REP. 232).

18850-70-M: GENERAL TRUCK DRIVERS' UNION LOCAL 879 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. HAMILTON TRUCKING LIMITED (RESPONDENT).

(SEE DECISION [1971] OLRB REP. 237).

316-71-M: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. KENROC TOOLS LIMITED (RESPONDENT). (GRANTED).

REFERENCE TO BOARD PURSUANT TO SECTION 79A

182-70-M: PERMA-MIX LIMITED (EMPLOYER) V. TEAMSTERS' LOCAL UNION 879 (TRADE UNION). (GRANTED).

(SEE DECISION [1971] OLRB REP. 242).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

18138-70-R: EDMOND BEATTY, HERMANN MORIN, LEON DESCHAMPS, SERAFIM DA COSTA, REGIS VERVILLE, FABIEN BRISSON, ROLLAND HUMBERT, REAL MORIN, RONALD M. LARABEE, GAETAN MORIN, JEAN RIOUX, ARMAND COUTURE, MARCEL CLOUTIER, JEAN-LOUIS MORIN, JEAN GUY JACQUES, GILLES MORIN, JACQUES PELLETIER, CALIXTE MORIN, MARCISSE BELANGER, ROMIO TALBOT, PAUL LEONARD, GEORGES RIOUX, DENIS F. CHEFF, YVES DROUIN, GILLES DUMONT, J. C. BOUCHARD (APPLICANTS) V. CANADIAN CONSTRUCTION, BUILDING MAINTENANCE AND GENERAL WORKERS' UNION (N.C.C.L.) (RESPONDENT) V. L'ABBE CONSTRUCTION LIMITED (INTERVENER). (REQUEST DENIED).

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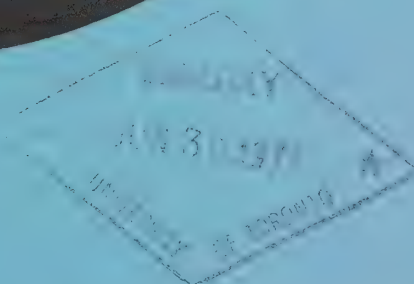
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Monthly Report



ONTARIO LABOUR RELATIONS BOARD

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18928-70-U: OFFICE & PROFESSIONAL EMPLOYEES INTERNATIONAL UNION, LOCAL 327 (COMPLAINANT) V. THE BOARD OF HEALTH NORTHWESTERN HEALTH UNIT (RESPONDENT).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND O. HODGES.

APPEARANCES AT THE HEARING: W. DUBINSKY AND E. M. STENCER FOR THE COMPLAINANT; T. A. O'FLAHERTY, Q.C., DR. P. F. PLAYFAIR, D. T. MCLEOD & F. T. MORRISH FOR THE RESPONDENT.

DECISION OF VICE-CHAIRMAN FRANK V. BOSCARIOL AND BOARD MEMBER J. D. BELL:
APRIL 29, 1971.

1. THIS IS A COMPLAINT FILED UNDER SECTION 65 OF THE LABOUR RELATIONS ACT, WHEREIN THE COMPLAINANT ALLEGES THAT MARJORIE BATCHELOR WAS DISMISSED BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 50 OF THE SAID ACT.

2. THE FOLLOWING FACTS DO NOT APPEAR TO BE IN DISPUTE. THE AGGRIEVED PERSON, MARJORIE BATCHELOR, HAD BEEN EMPLOYED FOR APPROXIMATELY 3 YEARS BY THE RESPONDENT IN THE CAPACITY OF A REGISTERED NURSING ASSISTANT AT THE RESPONDENT'S BRANCH OFFICE LOCATED IN THE TOWN OF DRYDEN. UPON THE CERTIFICATION OF THE COMPLAINANT ON APRIL 29, 1970, SHE TOOK AN ACTIVE ROLE IN THE ENSUING NEGOTIATIONS AS AN ELECTED MEMBER OF THE COMPLAINANT'S NEGOTIATING COMMITTEE. AS OF THE DATE OF THIS HEARING, THE PARTIES HAVE NOT BEEN SUCCESSFUL IN CONCLUDING A COLLECTIVE AGREEMENT DURING THESE NEGOTIATIONS WHICH APPEAR TO HAVE RUN A RATHER STORMY COURSE. ON JANUARY 11, 1971, SHE WAS INSTRUMENTAL IN PRESENTING A BRIEF TO THE DRYDEN TOWN COUNCIL WHICH WAS REPORTED IN THE LOCAL NEWSPAPER, A DIRECT CONSEQUENCE OF WHICH WAS THE IMMEDIATE REMOVAL OF MR. MCPHERSON AS CHAIRMAN OF THE HEALTH UNIT. THE SOLE QUESTION BEFORE THIS BOARD ESSENTIALLY INVOLVES A DETERMINATION AS TO WHETHER THE ACTIONS OF MARJORIE BATCHELOR, IN THIS REGARD, CONSTITUTED UNION ACTIVITY SO AS TO RENDER HER SUBSEQUENT DISMISSAL BY THE RESPONDENT, EFFECTIVE JANUARY 15, 1971, DISCRIMINATORY, AND AS SUCH, CONTRARY TO THE PROVISIONS OF THE ACT.

3. THE EVIDENCE OF MARJORIE BATCHELOR DISCLOSES THAT SHE PRESENTED THE BRIEF (FILED AS EXHIBIT #4) TO THE DRYDEN TOWN COUNCIL ON JANUARY 11, 1971 FOLLOWING A DISCUSSION WITH THE MAJOR IN DECEMBER OF 1970.

4. SHE STATED THAT SHE RECEIVED THE ASSISTANCE OF TREVOR WILLIAMS AND LORETTA HAYDEN IN THE COURSE OF ITS PRESENTATION TO THE COUNCIL. ALTHOUGH SHE CLAIMED THAT THE BRIEF WAS PRESENTED ON BEHALF OF THE COMPLAINANT, SHE DID ADMIT, UPON CROSS-EXAMINATION, THAT LORETTA

HAYDEN WAS ENGAGED BY THE RESPONDENT AS A PUBLIC HEALTH NURSE AND, AS SUCH, WAS EXCLUDED FROM THE BARGAINING UNIT. AS REGARDS TREVOR WILLIAMS, SHE CONCEDED THAT HE WAS NOT A MEMBER OF THE COMPLAINANT'S NEGOTIATING COMMITTEE.

5. THE WITNESS FURTHER STATED THAT BOTH THE CONTENTS AND THE PRESENTATION OF THE BRIEF WERE NEVER SUBMITTED TO THE MEMBERSHIP FOR APPROVAL ALTHOUGH SUCH COURSE OF ACTION DID RECEIVE THE CONCURRENCE OF MR. STENCER, A UNION REPRESENTATIVE ASSOCIATED WITH THE COMPLAINANT, AND THAT OF MR. NEPHEW, THE PRESIDENT OF LOCAL 327. SHE DID NOT KNOW IF, IN FACT, THE MEMBERSHIP WAS INFORMED PRIOR TO HER ACTIONS AND WHEN ASKED IF THIS WAS A "SOLO EFFORT", REPLIED THAT "NO ONE APPOINTED ME."

6. MR. NEPHEW'S TESTIMONY CORROBORATES HER STATEMENT TO THE EFFECT THAT HE HAD PRIOR KNOWLEDGE OF THE BRIEF AND HE ALSO ASSISTED IN ITS REVISION UPON READING IT. HE FURTHER STATED THAT HE WAS NOT AN EMPLOYEE OF THE RESPONDENT BUT IS ENGAGED AS A CLERK AT A LOCAL PAPER COMPANY. HAD HIS SERVICES NOT BEEN REQUIRED AT WORK, HE STATED THAT HE HIMSELF COULD HAVE PRESENTED THE BRIEF TO THE COUNCIL. IN DESCRIBING THE MAKE-UP OF THE COMPLAINANT, HE STATED THAT IT WAS A MULTIPLE LOCAL OF WHICH THE MEMBERS OF THE RESPONDENT'S EMPLOYEES WERE INCLUDED UPON CERTIFICATION. IN DESCRIBING THE PURPOSE OF THE BRIEF, HE STATED THAT "IT WAS A TACTIC BY THE NEGOTIATING COMMITTEE TO PRESSURE THE BOARD (E.G. THE RESPONDENT) TO MAKE SOME MOVEMENT IN NEGOTIATIONS."

7. THE EVIDENCE OF BRIAN ENGLAND REVEALS THAT HE IS EMPLOYED BY THE RESPONDENT AS A PUBLIC HEALTH INSPECTOR AND ALSO SERVES AS AN ELECTED MEMBER OF THE COMPLAINANT'S NEGOTIATING COMMITTEE. HE STATED THAT SHORTLY BEFORE MRS. BATCHELOR'S PRESENTATION OF THE BRIEF TO THE COUNCIL, HE HAD GIVEN TO HER HIS APPROVAL OF INCORPORATING THEREIN HIS OWN BRIEF WHICH HE ORIGINALLY PRESENTED TO THE RESPONDENT. THIS INFORMATION FORMED ABOUT ONE QUARTER OF HER BRIEF. WHEN ASKED IF HE HAD READ HER BRIEF, HE REPLIED THAT HE DID NOT ACTUALLY SEE IT PRIOR TO ITS PRESENTATION ALTHOUGH PARTS OF IT WERE READ TO HIM THE PREVIOUS NIGHT BY MRS. BATCHELOR OVER THE TELEPHONE. IN DESCRIBING THE PURPOSE OF THE BRIEF HE SAW IT "MERELY AS A LEVER TO PRY THE BOARD (E.G. THE RESPONDENT) INTO FAIRER NEGOTIATIONS ON ITS PART."

8. THE EVIDENCE OF DR. PLAYFAIR, CALLED BY THE RESPONDENT, DISCLOSES THAT HE IS THE RESPONDENT'S MEDICAL OFFICER OF HEALTH AND UPON WHOSE RECOMMENDATION THE AGGRIEVED PERSON WAS DISMISSED. HE STATED THAT HE TOOK NO PART IN THE NEGOTIATIONS AND FIRST HEARD ABOUT THE PRESENTATION OF THE BRIEF FROM THE MAYOR ON WEDNESDAY, WHICH WAS FOLLOWED BY HIS READING THE NEWSPAPER ACCOUNT SOME TIME ON THE FOLLOWING FRIDAY, JANUARY 15, 1971. HE STATED THAT HE IN NO WAY EQUATED MRS.

BATCHELOR'S ACTIONS IN THIS REGARD WITH HER POSITION ON THE NEGOTIATING COMMITTEE AND FELT THAT IT IN NO WAY REPRESENTED THE VIEWS OF THE EMPLOYEES CONCERNED. HE FURTHER STATED THAT, "WHEN SHE TOOK IT UPON HERSELF TO REPRESENT ALL OF THE EMPLOYEES OF THE HEALTH UNIT AND MAKE A STATEMENT IN THE OPEN DRYDEN COUNCIL MEETING THAT WAS DEFAMATORY IF NOT LIBELLOUS AND FULL OF UNTRUTHS - I JUST COULDN'T PUT UP WITH THIS." IN ADDITION TO THESE OBJECTIONS HE ALSO FELT THAT THE BRIEF SHOULD HAVE BEEN INITIALLY PRESENTED EITHER TO THE HEALTH BOARD OR ITS CHAIRMAN OR TO HIMSELF.

9. THE WITNESS DURING HIS EXAMINATION REFERRED TO A MEETING HE HELD WITH BRIAN ENGLAND LATE IN JANUARY OF 1971 CONCERNING THE LATTER'S BACKLOG OF WORK WHICH HAD ACCUMULATED OVER THE PAST THREE OR FOUR MONTHS. ALTHOUGH MR. ENGLAND DESCRIBED THE DOCTOR'S ACTIONS IN THIS REGARD AS UNFRIENDLY TOWARDS THE UNION, WE ARE SATISFIED THAT UPON REVIEWING ALL OF THE EVIDENCE IN THIS REGARD, THAT HE HAD NO OBJECTION TO ENGLAND'S UNION ACTIVITIES SO LONG AS THEY DID NOT INTERFERE WITH HIS PUBLIC HEALTH WORK. WE FURTHER FIND NO ANTI-UNION ANIMUS ON DR. PLAYFAIR'S PART AND IN THIS CONNECTION WE NOTE THAT HE DID ORIGINALLY GIVE SOME LIMITED ADVICE TO MR. ENGLAND CONCERNING THE MECHANICS OF SETTING UP A UNION.

10. MRS. MARIAN FAWCETT, A REGISTERED NURSING ASSISTANT, EMPLOYED BY THE RESPONDENT AS A CLINICAL ASSISTANT, STATED THAT SHE WAS SHOCKED UPON READING THE NEWSPAPER ACCOUNT OF THE PRESENTATION OF THE BRIEF BECAUSE, "IT PURPORTED TO SPEAK FOR ALL OF US" AND "WE WERE NOT AWARE OF IT." AS A RESULT A MEETING WAS HELD AMONG THE NURSES AND SECRETARIES WHICH CULMINATED IN THE DRAFTING OF A LETTER DATED FEBRUARY 10, 1971 AND FILED AS EXHIBIT #6 IN THESE PROCEEDINGS. THE LETTER IS ADDRESSED TO THE DRYDEN TOWN COUNCIL. ALTHOUGH THE WITNESS COULD NOT QUOTE EXACT FIGURES, SHE STATED THAT WELL OVER HALF OF THE EMPLOYEES IN THE BARGAINING UNIT HAD DISASSOCIATED THEMSELVES FROM THE BRIEF AS EVIDENCED BY THE SUBSEQUENT TAKING OF A CANVASS.

11. A PERUSAL OF THE WORDING OF THE BRIEF (EXHIBIT #4) ITSELF PURPORTS TO SPEAK ON BEHALF OF THE "EMPLOYEES OF THE NORTHWESTERN HEALTH UNIT, ALTHOUGH THERE IS A REFERENCE TO THE UNION ON PAGE 2 THEREOF. AS REGARDS THE THREE EMPLOYEES WHO TOOK PART IN THE PRESENTATION OF THE BRIEF, ONLY THE AGGRIEVED PERSON WAS A MEMBER OF THE NEGOTIATING COMMITTEE. MOREOVER, THE BOARD NOTES THAT ONE OF THESE PERSONS IS A PUBLIC HEALTH NURSE AND THEREFORE SPECIFICALLY EXCLUDED FROM THE BARGAINING UNIT AS DEFINED IN THE CERTIFICATE DATED APRIL 29, 1970. REGARDING THE TWO REMAINING MEMBERS OF THE NEGOTIATING COMMITTEE, WE ARE SATISFIED THAT BRIAN ENGLAND TOOK NO ACTIVE ROLE IN THE PREPARATION OF THE BRIEF ALTHOUGH HE DID APPROVE HIS OWN BRIEF BEING INCORPORATED THEREIN AND WAS MADE GENERALLY AWARE OF SOME OF THE CONTENTS OVER THE TELEPHONE. THERE IS NO EVIDENCE BEFORE US THAT

THE THIRD MEMBER HAD ANY KNOWLEDGE OF ITS CONTENTS OR HAD TAKEN ANY PART IN ITS PREPARATION. HAVING REGARD TO THESE CIRCUMSTANCES AND UPON CAREFULLY REVIEWING THE TOTALITY OF THE EVIDENCE IN THIS REGARD, WE ARE SATISFIED THAT MARJORIE BATCHELOR WAS NOT ACTING ON BEHALF OF THE COMPLAINANT AT THE RELEVANT TIMES.

12. HAVING ASSESSED ALL THE EVIDENCE IN THIS CASE AND THE REPRESENTATIONS OF THE PARTIES, WE FIND THAT THE DISMISSAL OF MARJORIE BATCHELOR BY THE RESPONDENT WAS A DIRECT RESULT OF HER PARTICIPATION IN THE PREPARATION OF THE CONTENTS OF THE BRIEF TOGETHER WITH ITS PRESENTATION TO THE TOWN COUNCIL, WHICH UNDER THESE CIRCUMSTANCES, WE FIND, DOES NOT CONSTITUTE UNION ACTIVITY.

13. ACCORDINGLY, WE FIND THAT THE COMPLAINANT HAS NOT SATISFIED THE ONUS THAT RESTS UPON IT TO ESTABLISH THAT MARJORIE BATCHELOR WAS DEALT WITH BY THE RESPONDENT CONTRARY TO SECTION 50 OF THE ACT.

14. THIS COMPLAINT IS THEREFORE DISMISSED.

DECISION OF BOARD MEMBER O. HODGES: APRIL 29, 1971.

1. I DISSENT.

2. THE COMPLAINANT WAS CERTIFIED APRIL 29, 1970. THE UNION OFFICIAL DIRECTLY RESPONSIBLE FOR THE AREA IN WHICH THE RESPONDENT'S OPERATIONS ARE LOCATED IS E. W. STENCER, WHO APPEARED ON BEHALF OF LOCAL 327 AT THE ORIGINAL HEARING FOR CERTIFICATION. MR. STENCER IS PRESIDENT OF THE MID-CANADA COUNCIL OF THE OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION, AND LOCAL 327 IS AFFILIATED WITH THE MID-CANADA COUNCIL. HE IS NOT AN EMPLOYEE OF THE RESPONDENT.

3. LOCAL 327 IS A COMPOSITE LOCAL CONSISTING OF FIVE UNITS COMPRISED OF EMPLOYEES OF SEVERAL EMPLOYERS, THE RESPONDENT BEING ONE SUCH EMPLOYER. THE PRESIDENT OF LOCAL 327 IS MURRAY NEPHEW, WHO IS EMPLOYED IN ONE OF THE UNITS OTHER THAN THE UNIT COVERING THE RESPONDENT'S EMPLOYEES.

4. MARJORIE BATCHELOR AND BRIAN ENGLAND, ALONG WITH ANOTHER UNIDENTIFIED EMPLOYEE, ALL EMPLOYED BY THE RESPONDENT, ARE ELECTED MEMBERS OF THE NEGOTIATING COMMITTEE REPRESENTING THE UNIT OF EMPLOYEES CERTIFIED TO BARGAIN FOR "ALL EMPLOYEES" OF THE RESPONDENT, "THE BOARD OF HEALTH, NORTHWESTERN HEALTH UNIT", EXCEPT REGISTERED GRADUATE NURSES AND PUBLIC HEALTH NURSES. CERTAIN OTHER EXCLUSIONS ARE NOT HERE MATERIAL.

5. MARJORIE BATCHELOR IS THE ONLY MEMBER OF THE UNIT NEGOTIAT-

ING COMMITTEE OF LOCAL 327 THAT APPEARED BEFORE COUNCIL, ALTHOUGH TREVOR WILLIAMS WHO APPEARED WITH HER IS EMPLOYED BY THE RESPONDENT WITHIN THE UNIT CERTIFIED TO REPRESENT "ALL EMPLOYEES", SAVE THE EXCLUDED CATEGORIES. LORETTA HAYDEN ALSO APPEARED AT COUNCIL WITH BATCHELOR AND WILLIAMS. LORETTA HAYDEN, ALTHOUGH AN EMPLOYEE OF THE RESPONDENT, IS IN THE EXCLUDED CATEGORY OF PUBLIC HEALTH NURSE. THESE THREE ATTENDED COUNCIL TO PRESENT THE BRIEF SO OFFENSIVE TO DR. P. F. PLAYFAIR, THE BOARD EXECUTIVE OFFICER AND MEDICAL OFFICER OF HEALTH. IT IS DR. PLAYFAIR WHO HAS THE AUTHORITY TO FIRE ANY EMPLOYEE OF THE RESPONDENT, INCLUDING THE CATEGORIES EXCLUDED FROM THE CERTIFIED BARGAINING UNIT.

6. DR. PLAYFAIR TESTIFIED THAT HE HAD A CONVERSATION WITH MARJORIE BATCHELOR WHEN SHE WAS FIRED. HE TOLD HER HE WAS UNHAPPY ABOUT HER ATTITUDE AND EFFECT ON THE OFFICE, AND THAT SHE ALLOWED HER UNION ACTIVITIES TO INTERFERE WITH HER WORK IN THE OFFICE. HE SAID THAT IF IT WAS A MATTER OF UNION ACTIVITIES INTERFERING WITH FUNCTION, HE WOULD HAVE LET HER GO DURING THE PREVIOUS 9 MONTHS. IT WAS THEN SHE TOOK IT ON HERSELF TO REPRESENT ALL EMPLOYEES OF THE HEALTH UNIT IN OPEN COUNCIL MEETING "THAT WAS DEFAMATORY, IF NOT LIBELLOUS AND FULL OF UNTRUTHS", THAT "HE COULD NOT PUT UP WITH IT ANY MORE."

7. DR. PLAYFAIR ALSO TESTIFIED WITH RESPECT TO THE EARLIER EVIDENCE OF UNION WITNESS BRIAN ENGLAND, THE OTHER MEMBER OF THE NEGOTIATING COMMITTEE OF LOCAL 327 TO TESTIFY DR. PLAYFAIR SAID HE CALLED ENGLAND INTO HIS OFFICE BECAUSE HIS WORK AT THE HEALTH UNIT WAS POORLY HANDLED OVER 4 MONTHS, AND "I SUGGESTED HE WAS ALLOWING UNION ACTIVITIES TO INTERFERE AND HE DID NOT ENJOY WORK AS BEFORE." ENGLAND PROMISED HE WOULD GET BACK ON THE TRACK.

8. UNDER CROSS-EXAMINATION, DR. PLAYFAIR TESTIFIED THE MAYOR OF DRYDEN TELEPHONED HIM ON WEDNESDAY AND READ PART OF THE BRIEF THAT BATCHELOR HAD READ TO DRYDEN TOWN COUNCIL THE PREVIOUS DAY. THE MAYOR COMMENTED ON THE MANNER OF PRESENTATION AND CONTENTION. DR. PLAYFAIR SAID HE WAS AWARE OF THE ONE PERSON WHO HAD PRESENTED THE BRIEF. ON THE FRIDAY FOLLOWING DR. PLAYFAIR GOT HIS COPY OF THE DRYDEN PAPER AND SAW THE PRESS REPORT OF THE TUESDAY MEETING OF COUNCIL THAT DEALT WITH THE PRESENTATION OF THE BRIEF. HE THEN WROTE HER THE LETTER OF DISMISSAL DATED JANUARY 15. ON SATURDAY, JANUARY 16 A TELEPHONE CALL TO MRS. BATCHELOR WAS MADE BY DR. PLAYFAIR, ADVISING HER OF THE LETTER HE HAD WRITTEN. WITH RESPECT TO THIS TELEPHONE CONVERSATION, MRS. BATCHELOR HAD EARLIER TESTIFIED THAT DR. PLAYFAIR STATED, "THAT FOR TWO YEARS HE HAD WANTED TO DO THIS" AND WHEN SHE ASKED WHY, HE HUNG UP.

9. MRS. BATCHELOR TESTIFIED AS THE FIRST WITNESS AT THIS HEARING. PART OF HER TESTIMONY DEALT WITH A MEETING OF DRYDEN TOWN COUN-

CIL ON JANUARY 23, 1971. SHE AND DR. PLAYFAIR WERE ASKED TO ATTEND. MAYOR ROWAT ASKED DR. PLAYFAIR WHY MRS. BATCHELOR WAS FIRED. DR. PLAYFAIR GAVE NO ANSWER. THE MAYOR ASKED AGAIN IF PRESENTING THE BRIEF TO THE TOWN COUNCIL HAD ANYTHING TO DO WITH MY BEING FIRED. DR. PLAYFAIR SAID THAT "IT DEFINITELY HAD SOME BEARING ON IT, BUT IF COUNCIL WANTED TO KNOW OTHER REASONS, IT WOULD BE DISCUSSED IN PRIVATE, NOT PUBLIC."

10. MRS. BATCHELOR ALSO TESTIFIED THAT SHE HAD DISCUSSED THE PRESENTATION OF THE BRIEF AND PARTS OF ITS CONTENTS WITH MR. STENCER, THE PRESIDENT OF THE MID-CANADA COUNCIL OF THE UNION, WITH MR. NEPHEW, THE PRESIDENT OF LOCAL 327 AND WITH BRIAN ENGLAND, THE OTHER MEMBER OF THE NEGOTIATING COMMITTEE OF LOCAL 327. ALL OF THESE UNION OFFICIALS AGREED SHE SHOULD GO AHEAD AND TESTIFIED TO THAT EFFECT. PRESIDENT NEPHEW SAID HE WOULD HAVE PRESENTED THE BRIEF IF HE COULD HAVE GOT OFF WORK THAT EVENING TO ATTEND COUNCIL. MR. ENGLAND AGREED PART OF AN EARLIER BRIEF OF HIS OWN SHOULD BE INCORPORATED IN THE PRESENTATION.

11. THERE IS NO EVIDENCE THAT DR. PLAYFAIR SAW THE BRIEF BEFORE DECIDING TO FIRE BATCHELOR. HE ACTED BY LONG DISTANCE ON INFORMATION RECEIVED FROM OTHERS AND FROM THE NEWSPAPER REPORT OF THE COUNCIL MEETING. HE GAVE NO REASONS IN HIS LETTER OF DISMISSAL AS ARE IN FACT REQUIRED BY BOARD PROCEDURES AS EVIDENCED BY EXHIBIT #3, THE POSTED PERSONNEL POLICIES OF THE NORTHWESTERN HEALTH UNIT DATED JANUARY 1970, SECTION 8. HE HAD NO ANSWER TO MAYOR ROWAT, OTHER THAN THE BRIEF WAS PARTLY RESPONSIBLE. HIS OWN TESTIMONY ADMITS OF INTEREST IN THE EXTENT OF THE UNION ACTIVITY OF BATCHELOR FOR 9 MONTHS AND OF ENGLAND FOR 4 MONTHS. ENGLAND, HE TESTIFIES, "SAID HE WOULD GET BACK IN THE TRACK." PERHAPS THIS IS WHY ENGLAND DID NOT ATTEND THE COUNCIL MEETING. HE WAS BACK ON THE TRACK.

12. UNION ACTIVITY BY BATCHELOR IS CLEARLY ESTABLISHED. THE ANIMUS OF DR. PLAYFAIR IS ESTABLISHED. I MUST RESPECTFULLY DISAGREE WITH MY COLLEAGUES IN THEIR UNDERSTANDING OF THE ATTITUDE OF DR. PLAYFAIR TOWARD THE UNION ACTIVITY. ENGLAND SAID THE ATTITUDE WAS 'UNFRIENDLY' WHEN HE WAS CALLED TO TASK BY THE DOCTOR. THE BRIEF WAS UNION ACTIVITY DIRECTED TO MOVE THE BOARD IN NEGOTIATING AFTER A YEAR OF DIFFICULT BARGAINING, AS LOCAL PRESIDENT NEPHEW TESTIFIED. NEGOTIATING COMMITTEE MEMBER ENGLAND ALSO TESTIFIED TO THIS EFFECT. HE SAID, "THE BRIEF CAME INTO BEING BECAUSE NEGOTIATIONS WERE NOT SUCCESSFUL AND IT WAS INTENDED AS A LEVER TO PRY THE BOARD INTO A MORE FAVOURABLE RESPONSE." BATCHELOR HAD THEIR SUPPORT IN HER PARTICIPATION IN THE PRESENTATION OF THE BRIEF, AS IT AFFECTED THEIR INTERESTS.

13. ON ALL OF THE FACTS AND AFTER CAREFUL CONSIDERATION OF THE

POSITION TAKEN BY THE MAJORITY AND THEIR VIEW OF THE EVIDENCE, I MUST RESPECTFULLY AND MOST FIRMLY DISAGREE WITH THEIR FINDING. MY UNDERSTANDING OF THE EVIDENCE, AND WITH CONSIDERATION OF THE NATURE OF THE RESPONDENT'S OPERATIONS AS A PUBLIC SERVICE, MAKES IT CLEAR THAT MARJORIE BATCHELOR WAS DISCHARGED FOR UNION ACTIVITY CONTRARY TO SECTION 50 OF THE LABOUR RELATIONS ACT.

14. MY FINDING IS THAT MARJORIE BATCHELOR BE RE-INSTATED IN HER PREVIOUS POSITION AT DRYDEN WITHOUT INTERRUPTION IN HER SERVICE RECORD AND THAT SHE BE COMPENSATED IN FULL FOR LOSS OF EARNINGS AND BENEFITS.

40-70-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. UNIVERSITY OF WINDSOR (RESPONDENT) V. INTERNATIONAL UNION, UNITED PLANT GUARD WORKERS OF AMERICA, AMALGAMATED PLANT GUARDS, LOCAL 1958 (INTERVENER).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND E. BOYER.

DECISION OF J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBER J. D. BELL:
MAY 4, 1971.

1. THIS IS AN APPLICATION FOR CERTIFICATION WHEREIN THE BOARD DIRECTED THAT PRE-HEARING REPRESENTATION VOTES BE CONDUCTED IN VOTING CONSTITUENCY #1 AND VOTING CONSTITUENCY #2 DESCRIBED IN THE BOARD'S DECISION DATED APRIL 1, 1971 IN THIS MATTER. IN ITS DECISION OF APRIL 1ST, THE BOARD AUTHORIZED ITS EXAMINER TO INQUIRE INTO THE DUTIES AND RESPONSIBILITIES OF TWO GROUPS OF PERSONS. ONE GROUP OF PERSONS WORKED IN THE OFFICE OF DUPLICATING SERVICES AND THE OTHER GROUP WORKED IN THE COMPUTER CENTRE. AT THE EXAMINER'S HEARING, THE PARTIES SIGNED AN AGREED STATEMENT OF FACTS CONCERNING THE DUTIES AND RESPONSIBILITIES OF BOTH GROUPS OF PERSONS. THE CONCLUDING PORTION OF THE AGREED STATEMENT READS AS FOLLOWS:

THE PARTIES AGREE TO THE FOREGOING STATEMENT OF FACTS AND REQUEST THE BOARD TO MAKE A DETERMINATION AS TO THE STATUS OF THE PERSONS IN DISPUTE UPON THE BASIS OF THE FOREGOING.

2. IT IS READILY APPARENT FROM THE EVIDENCE CONTAINED IN THE AGREED STATEMENT OF FACTS THAT BOTH THE OFFICE OF DUPLICATING SERVICES AND THE COMPUTER CENTRE PERFORM FUNCTIONS WHICH ARE CONFIDENTIAL IN MATTERS RELATING TO LABOUR RELATIONS. HOWEVER, NO DISTINCTION IS MADE BETWEEN THE VARIOUS OCCUPATIONAL CLASSIFICATIONS WHO ARE EMPLOYED IN THE TWO DEPARTMENTS AND THERE IS ACCORDINGLY NOTHING BEFORE US WHICH WOULD ENABLE US TO DETERMINE WHETHER ANY OF THE PERSONS EMPLOYED

IN THOSE DEPARTMENTS ARE NOT INVOLVED WITH SUCH CONFIDENTIAL FUNCTIONS. WE THEREFORE MUST FIND THAT THE APPLICANT HAS FAILED TO ADDUCE THE NECESSARY EVIDENCE TO PERMIT THE BOARD TO FIND THAT ALL PERSONS EMPLOYED IN THE TWO DEPARTMENTS ARE NOT EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS.

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284-71-R: READY-MIX, BUILDING SUPPLY, HYDRO & CONSTRUCTION DRIVERS, WAREHOUSEMEN & HELPERS, TEAMSTERS LOCAL UNION No. 230 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. PORT HOPE READY MIX LIMITED (RESPONDENT).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS J.D. BELL AND O. HODGES.

APPEARANCES AT THE HEARING: I.J. THOMSON AND JOHN PAYNE FOR THE APPLICANT; R.B. STATTON FOR THE RESPONDENT.

DECISION OF THE BOARD: MAY 4, 1971.

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2. THE RESPONDENT ADVISED THE BOARD THAT THIS WAS A NEW OPERATION AND THAT THE COMPANY WAS ATTEMPTING TO GET ORGANIZED AND ACCORDINGLY REQUESTED THAT PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD BE EXCLUDED FROM THE BARGAINING UNIT. THE OPERATION HAS NOT YET REACHED THE STAGE OF DEVELOPMENT IN THE PERIOD THAT IT IS LIKELY TO EMPLOY PART-TIME EMPLOYEES OR STUDENTS. IN UNITED GLASS & CERAMIC WORKERS OF NORTH AMERICA, AFL-CIO-CLC V. DOMINION GLASS COMPANY LIMITED V. CANADIAN UNION OF OPERATING ENGINEERS, DECEMBER 1970 OLRB MTHLY. REP. 935 THE MAJORITY OF THE BOARD STATED AS FOLLOWS:

"THE POLICY OF THE BOARD OR ITS CUSTOMARY PRACTICE IN DEALING WITH THE QUESTION OF PART-TIME EMPLOYEES AND STUDENTS IN NEW PLANTS HAS BEEN STATED IN THE FOLLOWING TERMS:

'THE FACT THAT A PLANT HAS BEEN IN OPERATION A SHORT TIME AND HAS NOT YET REACHED THE STAGE OF DEVELOPMENT OR THE PERIOD OF THE YEAR WHEN IT IS LIKELY TO EMPLOY PART-TIME EMPLOYEES OR STUDENTS IS NOT IN ITSELF A

SUFFICIENT CONSIDERATION TO WARRANT A DEPARTURE FROM THE GENERAL PRINCIPLE THAT SUCH CLASSIFICATIONS ARE TO BE INCLUDED IN A BARGAINING UNIT WHERE THE EMPLOYER HAS NOT HAD PERSONS IN SUCH CLASSIFICATIONS IN HIS EMPLOY PRIOR TO OR AT THE TIME OF THE APPLICATION."'

WE SEE NO REASON IN THIS CASE TO DEPART FROM THE DECISION IN THAT CASE.

3. HAVING REGARD TO THE SUBMISSIONS OF THE PARTIES THE BOARD FINDS THAT ALL EMPLOYEES OF THE RESPONDENT WORKING AT OR OUT OF BOWMANVILLE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

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5. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

62-70-R: FUEL, BUS, LIMOUSINE, PETROLEUM DRIVERS AND ALLIED EMPLOYEES LOCAL UNION 352 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. INDUSMIN LIMITED (RESPONDENT) V. UNITED CEMENT, LIME AND GYPSUM WORKERS INTERNATIONAL UNION, C.L.C. (INTERVENER).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS J. D. BELL AND P. J. O'KEEFFE.

APPEARANCES AT THE HEARING: I. J. THOMSON AND JACK HURD FOR THE APPLICANT; J. B. NOONAN AND A. R. WATTS FOR THE RESPONDENT; ERNEST F. ARNOLD FOR THE INTERVENER.

DECISION OF THE BOARD: MAY 6, 1971.

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2. THE APPLICANT IS SEEKING CERTIFICATION ON BEHALF OF A BARGAINING UNIT DESCRIBED IN TERMS OF "ALL EMPLOYEES OF THE RESPONDENT AT MIDLAND, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF". THE RESPONDENT AND THE INTERVENER OPPOSE THIS APPLICATION FOR CERTIFICATION. THE RESPONDENT ADOPTS THE POSITION THAT THE GRANTING OF THE BARGAINING UNIT SUGGESTED BY THE APPLICANT WOULD MEAN THE FRAGMENTATION OF ITS OPERATION. THE INTERVENER SUBMITS THAT THE BARGAINING UNIT AS PRESENTLY CONSTITUTED IS OF GREATER ADVANTAGE TO THE MAJORITY OF EMPLOYEES CONCERNED AND THAT THE EMPLOYEES ARE OPPOSED TO ITS FRAGMENTATION.
3. IN ORDER TO APPRECIATE THE PRESENT COLLECTIVE BARGAINING RELATIONSHIP BETWEEN THE RESPONDENT AND THE INTERVENER IT IS NECESSARY TO RETRACE THE STEPS WHICH LED TO THE PRESENT SITUATION.
4. ON OCTOBER 30, 1968, THE BOARD ISSUED A CERTIFICATE TO THE INTERVENER WITH RESPECT TO A BARGAINING UNIT DESCRIBED ON THE AGREEMENT OF THE PARTIES AS "ALL EMPLOYEES OF THE ONTARIO SILICA DIVISION OF INDUSTRIAL MINERALS OF CANADA LIMITED IN THE TOWNSHIP OF KILLARNEY, MANITOULIN DISTRICT AND IN THE TOWN OF MIDLAND, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF". SEE BOARD FILE NO. 15199-68-R. AT THAT TIME THE RESPONDENT WAS OPERATING ITS SILICA QUARRY IN THE TOWNSHIP OF KILLARNEY BUT HAD NOT YET COMMENCED TO OPERATE ITS PROCESSING PLANT AT THE TOWN OF MIDLAND IN SIMCOE COUNTY. THERE IS NO INDICATION IN THE DECISION OF THE BOARD DATED OCTOBER 30, 1968, THAT IT WAS MADE AWARE OF THE FACT THAT AT THE TIME OF CERTIFICATION, INDUSTRIAL MINERALS OF CANADA LIMITED HAD NOT YET COMMENCED OPERATIONS OR HIRED EMPLOYEES AT ITS PROPOSED MIDLAND OPERATION.
5. THE RESPONDENT AND THE INTERVENER ENTERED INTO A COLLECTIVE AGREEMENT WHICH BECAME EFFECTIVE ON MAY 1, 1969 AND WHICH CONTINUED IN EFFECT UNTIL APRIL 30, 1971. ARTICLE 1.2 OF THIS COLLECTIVE AGREEMENT STATES:

THIS AGREEMENT APPLIES TO ALL EMPLOYEES OF
INDUSMIN LIMITED IN THE TOWNSHIP OF KILLARNEY,
MANITOULIN DISTRICT, AND THE TOWN OF MIDLAND,
SIMCOE COUNTY, ALL IN THE PROVINCE OF ONTARIO,
SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE
RANK OF FOREMEN, OFFICE AND SALES STAFF, WATCH-
MEN, BOAT OPERATOR, AND KITCHEN STAFF.
6. THE RESPONDENT OPENED ITS PLANT AT MIDLAND IN APRIL 1970 AT WHICH TIME IT COMMENCED HIRING PERSONNEL FOR THIS OPERATION. THE RESPONDENT AND THE INTERVENER PROVIDED IN ARTICLE 16 OF THE COLLECTIVE AGREEMENT THAT:

THE COMPANY WILL MEET A COMMITTEE OF THE MIDLAND, ONTARIO EMPLOYEES BEFORE THE FIRST ANNIVERSARY DATE OF THIS AGREEMENT TO NEGOTIATE THE CONDITIONS OF EMPLOYMENT AND WAGE RATES TO BE EFFECTIVE AT MIDLAND, ONTARIO.

7. ON JULY 17, 1970, THE APPLICANT FILED AN APPLICATION FOR CERTIFICATION WITH RESPECT TO A UNIT OF EMPLOYEES OF THE RESPONDENT CONSISTING OF "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWN OF MIDLAND, ONTARIO SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF". THE BOARD HELD THAT THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER COVERED THE EMPLOYEES AT MIDLAND AND DISMISSED THE APPLICATION. SEE THE INDUSMIN LIMITED CASE, OLRB M.R. SEPTEMBER 1970, P. 653. ON AUGUST 24, 1970, THE RESPONDENT AND THE INTERVENER EXECUTED AN ADDENDUM TO THEIR COLLECTIVE AGREEMENT WHICH ADDENDUM CONTAINED PROVISIONS SUCH AS WAGE RATES WHICH SPECIFICALLY APPLIED TO THE EMPLOYEES OF THE RESPONDENT AT ITS MIDLAND OPERATIONS.

8. HAVING REGARD TO THE PROVISIONS OF SECTIONS 5(2) AND 46 OF THE LABOUR RELATIONS ACT, THE BOARD FINDS THAT THIS INSTANT APPLICATION FOR CERTIFICATION IS TIMELY. THE QUESTION FOR CONSIDERATION IS WHETHER THE BOARD OUGHT TO PERMIT THE APPLICANT IN THESE CIRCUMSTANCES TO DISTURB THE PRESENT BARGAINING UNIT BY PERMITTING THE EMPLOYEES OF THE RESPONDENT AT MIDLAND TO CHOOSE BETWEEN THE APPLICANT AND THE INTERVENER.

9. THE RESPONDENT OPERATES A SILICA QUARRY IN THE TOWNSHIP OF KILLARNEY IN THE DISTRICT OF MANITOULIN. THE QUARRY IS OPERATED ON A SEASONAL BASIS ONLY. THE SILICA IS SHIPPED A DISTANCE OF APPROXIMATELY 120 MILES ACROSS GEORGIAN BAY TO MIDLAND BY A PARTY WHICH IS NOT CONNECTED WITH THE RESPONDENT. AT MIDLAND THE RESPONDENT PROCESSES THE QUARTZ AT ITS PLANT AND ENSURES THE QUALITY CONTROL OF ITS PRODUCT. THERE IS LOCAL SUPERVISION BOTH AT KILLARNEY, WHERE THE WORK FORCE IS APPROXIMATELY TWENTY-TWO, AND AT MIDLAND, WHERE THE WORK FORCE IS APPROXIMATELY TWENTY-SIX. THERE IS NO INTERCHANGE OF EMPLOYEES IN THE BARGAINING UNIT BETWEEN KILLARNEY AND MIDLAND. THE OVERALL MAINTENANCE PLANNING AND SUPERVISION FOR THE RESPONDENT'S OPERATIONS ARE CONDUCTED FROM MIDLAND. THE PURCHASING OF ALL SUPPLIES IS DONE FROM MIDLAND WHERE THE OFFICE MANAGER IS LOCATED AND THE PAY-ROLL FOR BOTH OPERATIONS IS PREPARED IN MIDLAND.

10. IT IS NOT THE FUNCTION OF THE BOARD TO ACT AS A COURT OF APPEAL UPON THE DETERMINATION OF ANOTHER PANEL. HOWEVER, WE NOTE THAT THE BARGAINING UNIT DETERMINED BY THE BOARD ON OCTOBER 30, 1968 WAS ON THE AGREEMENT OF THE PARTIES AND THAT THERE IS NO INDICATION

IN THAT DECISION THAT THE BOARD WAS MADE AWARE OF THE FACTS REFERRED TO IN PARAGRAPH FOUR HEREIN. IT IS COMMON FOR EMPLOYEES PERFORMING SIMILAR WORK TO BECOME COVERED UNDER A COLLECTIVE AGREEMENT BY A PROCESS OF ACCRETION TO AN EXISTING BARGAINING UNIT WITHIN, FOR EXAMPLE, A MUNICIPALITY, OR BY THE ADDITION OF PLANT TO EXISTING FACILITIES WITHIN A SPECIFIC GEOGRAPHIC AREA. HOWEVER, SUCH IS NOT THE CASE HERE WHERE EMPLOYEES AT MIDLAND ENGAGED IN WORK DISSIMILAR TO THE SEASONAL QUARRYING AT KILLARNEY AND SEPARATED BY 120 MILES WERE NEVER GIVEN AN OPPORTUNITY TO SELECT THEIR PRESENT BARGAINING AGENT. WE BELIEVE THAT THE PANEL OF THE BOARD WHICH DETERMINED THE APPROPRIATE BARGAINING UNIT ON OCTOBER 30, 1968, WOULD NOT HAVE INCLUDED THE MIDLAND LOCATION IN THE DESCRIPTION OF THE BARGAINING UNIT HAD IT BEEN AWARE OF THE FACTS.

11. THE FACT OF COMMON ADMINISTRATION MAY BE CITED IN SUPPORT OF A CLAIM THAT THE EMPLOYEES AT KILLARNEY AND MIDLAND OUGHT TO BE INCLUDED IN ONE BARGAINING UNIT. HOWEVER, IN CANADIAN HANSON & VAN WINKLE CO. LTD. CASE, OLRB M.R. NOVEMBER 1967, P. 756, THE BOARD FOUND THAT NOTWITHSTANDING THE COMMON ADMINISTRATION OF TWO PLANTS WITHIN A SPECIFIC GEOGRAPHIC AREA, THE ABSENCE OF INTERCHANGE OF PRODUCTION PERSONNEL, THE LACK OF EMPLOYEE COMMUNITY OF INTEREST AND THE SEPARATE AND INDEPENDENT NATURE OF THE PRODUCTION OPERATIONS AT EACH PLANT MILITATED AGAINST DECLARING ONE UNIT TO BE APPROPRIATE FOR BOTH PLANTS. REFERENCE IS ALSO MADE TO THE GREB INDUSTRIES LTD. CASE, OLRB M.R. MARCH 1968, P. 1164. THE FACT THAT THE TWO OPERATIONS OF THE RESPONDENT IN THE INSTANT CASE ARE NOT IN A SPECIFIC GEOGRAPHIC AREA LENDS EVEN GREATER SUPPORT TO THE VIEW THAT THE EMPLOYEES AT MIDLAND AND KILLARNEY OUGHT TO BE IN SEPARATE BARGAINING UNITS. SIMILARLY, THE LACK OF INTERCHANGE BETWEEN EMPLOYEES WHO PERFORM EXACTLY THE SAME TYPE OF WORK IN TWO LOCATIONS ONLY 50 MILES APART BY ROAD HAS BEEN HELD BY THE BOARD TO JUSTIFY NOT PLACING THE EMPLOYEES AT THE TWO LOCATIONS IN ONE BARGAINING UNIT. SEE THE WIT-TICH'S BREAD LIMITED CASE, OLRB M.R. JANUARY 1969, P. 1019.

12. IN THE USARCO LIMITED CASE, OLRB M.R. 1967, P. 526, THE BOARD CONSIDERED SOME OF THE FACTORS WHICH IT TAKES INTO CONSIDERATION IN DETERMINING THE APPROPRIATENESS OF BARGAINING UNITS WHICH INCLUDE EMPLOYEES AT MORE THAN ONE LOCATION. THE FACTORS CONSIDERED IN THAT CASE WERE AS FOLLOWS:

1. COMMUNITY OF INTEREST OF EMPLOYEES;
2. CENTRALIZATION OF MANAGERIAL AUTHORITY;
3. THE ECONOMIC FACTOR OF ONE BARGAINING UNIT;
4. SOURCE OF WORK.

13. WITH RESPECT TO FACTOR NO. 1, THE NATURE OF THE WORK PERFORMED AND THE WORKING CONDITIONS ARE QUITE DIFFERENT. IN ADDITION,

THE SKILLS OF THE EMPLOYEES APPEAR TO BE QUITE DIFFERENT. WHILE THE RESPONDENT ADMINISTERS BOTH OF ITS OPERATIONS FROM MIDLAND, THE OPERATIONS IN QUESTION ARE 120 MILES APART. IN OUR OPINION, THERE IS NO FUNCTIONAL COHERENCE AND INTERDEPENDENCE BETWEEN THE EMPLOYEES AT THE TWO LOCATIONS. ALTHOUGH IT IS TRUE THAT THE RESPONDENT PROVIDES ITS OWN RAW MATERIAL FOR PROCESSING AT MIDLAND, IT CANNOT BE SAID THAT THIS CONSTITUTES FUNCTIONAL COHERENCE AND INTERDEPENDENCE AS THESE TERMS HAVE BEEN USED BY THE BOARD IN THE CONTEXT OF AN EMPLOYER'S OPERATION. WITH RESPECT TO FACTOR NO. 2, THERE IS LOCAL SUPERVISION AT BOTH KILLARNEY AND MIDLAND EVEN THOUGH THE OVERALL SUPERVISION OF THE RESPONDENT'S OPERATIONS IS DIRECTED FROM MIDLAND. WITH RESPECT TO FACTOR NO. 3, IT WAS NOT ALLEGED BY THE RESPONDENT THAT IT WOULD HAVE AN ECONOMIC ADVANTAGE IN HAVING TO DEAL WITH ONE BARGAINING UNIT RATHER THAN TWO SEPARATE BARGAINING UNITS. WITH RESPECT TO FACTOR NO. 4, THE SOURCE OF WORK ORIGINATES ULTIMATELY AT KILLARNEY ALTHOUGH IN A FUNCTIONAL SENSE THE SOURCE OF WORK ARISES AT THE TWO SEPARATE LOCATIONS OF KILLARNEY AND MIDLAND.

14. IN THE CIRCUMSTANCES OF THE INSTANT APPLICATION WE WOULD ADD A FURTHER FACTOR WHICH OUGHT TO BE CONSIDERED BY THE BOARD. WE REFER TO THE WISHES OF THE EMPLOYEES CONCERNED. ALL OF THE 24 EMPLOYEES AT MIDLAND WHEN THIS APPLICATION WAS MADE HAVE INDICATED THAT THEY WISH THE APPLICANT TO REPRESENT THEM IN COLLECTIVE BARGAINING. HAVING REGARD TO THE HISTORY OF THE BARGAINING RELATIONSHIP BETWEEN THE RESPONDENT AND THE INTERVENER WE ARE OF THE OPINION THAT THE WISHES OF THE EMPLOYEES AT MIDLAND ARE HIGHLY SIGNIFICANT.

15. IN THE RESULT, THEREFORE, THE BOARD IS OF THE OPINION, FOR THE REASONS GIVEN ABOVE, THAT THE INTERESTS OF INDUSTRIAL RELATIONS BETWEEN THE PARTIES TO THIS APPLICATION FOR CERTIFICATION WOULD BE BEST SERVED BY PERMITTING THE EMPLOYEES AT MIDLAND TO CHOOSE BETWEEN THE APPLICANT AND THE INTERVENER AS THEIR BARGAINING AGENT.

16. THE BOARD WISHES TO EMPHASIZE THAT THE DECISION IN THIS CASE RESTS SQUARELY UPON THE FACTS CITED HEREIN. THIS DECISION DOES NOT INDICATE A DEPARTURE BY THE BOARD FROM ITS PREVAILING POLICY OF REFUSING TO FRAGMENT EXISTING BARGAINING UNITS UNLESS SPECIAL CIRCUMSTANCES EXIST.

17. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN THIRTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE VOTING CONSTITUENCY SET OUT BELOW, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON MARCH 11, 1971, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSES OF ASCERTAINING MEMBER-

SHIP UNDER SECTION 7(1) OF THE SAID ACT.

18. THE BOARD DIRECTS THAT A REPRESENTATION VOTE BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE FOLLOWING VOTING CONSTITUENCY:

"ALL EMPLOYEES OF THE RESPONDENT IN THE TOWN OF MIDLAND, SIMCOE COUNTY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, WATCHMEN, JANITORS, AND LABORATORY TECHNICIANS."

19. ALL EMPLOYEES OF THE RESPONDENT IN THE VOTING CONSTITUENCY ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

20. VOTERS WILL BE GIVEN A CHOICE BETWEEN THE APPLICANT AND THE INTERVENER.

21. THE MATTER IS REFERRED TO THE REGISTRAR.

197-70-R: INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) V. CONTINENTAL CAN COMPANY OF CANADA LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND O. HODGES:

DECISION OF THE BOARD: MAY 10, 1971.

1. THIS IS AN APPLICATION FOR CERTIFICATION IN WHICH THE BOARD BY ITS DECISION DATED APRIL 13, 1971 DIRECTED THAT A REPRESENTATION VOTE BE TAKEN. AT THE OUTSET OF THE HEARING IN THIS MATTER, THE RESPONDENT ADVISED THE BOARD THAT IT WISHED TO AMEND THE LIST OF EMPLOYEES FILED BY ADDING THE NAME OF E. PALMER, A PERSON CLASSIFIED BY THE RESPONDENT AS BUYER. MR. PALMER WAS PRESENT AT THE HEARING AND REPRESENTED THE GROUP OF EMPLOYEES WHO OPPOSED THE APPLICATION. MR. PALMER'S NAME WAS ADDED TO THE RESPONDENT'S LIST OF EMPLOYEES AND THE APPLICANT DID NOT OBJECT TO MR. PALMER'S NAME BEING INCLUDED IN THE BARGAINING UNIT. FOLLOWING THE BOARD'S DECISION OF APRIL 13, THE PARTIES MET AND ATTEMPTED TO AGREE ON THE VOTERS' LIST. THE APPLICANT CHALLENGED THE NAME OF MR. PALMER AND A SECOND EMPLOYEE WILLIAM CLERC, A PERSON CLASSIFIED AS CHIEF SAMPLEMAKER.

2. WITH RESPECT TO THE APPLICANT'S OBJECTION TO MR. PALMER, THE BOARD NOTES THAT THE APPLICANT FAILED TO OBJECT TO HIS INCLUSION IN THE LIST OF ELIGIBLE EMPLOYEES WHEN THE BOARD WAS INQUIRING INTO THE BARGAINING UNIT IN THIS MATTER. SINCE MR. PALMER WAS PRESENT AT THE HEARING, IT COULD NOT BE SAID THAT THERE WAS ANY CONFUSION IN THE MIND OF THE APPLICANT AT THE TIME MR. PALMER'S NAME WAS ADDED TO THE LIST OF EMPLOYEES INCLUDED IN THE BARGAINING UNIT. SINCE IT IS NOT ALLEGED THAT THERE HAS BEEN ANY CHANGE IN THE STATUS OF MR. PALMER SINCE THE HEARING IN THIS MATTER, THE BOARD IS NOT PREPARED TO PERMIT THE APPLICANT TO REPUDIATE ITS AGREEMENT WITH RESPECT TO THE INCLUSION OF MR. PALMER IN THE LIST OF BARGAINING UNIT EMPLOYEES AND ACCORDINGLY FINDS THAT THE APPLICANT CANNOT NOW CHALLENGE MR. PALMER'S STATUS.

3. HOWEVER, EVEN THOUGH THE APPLICANT DID NOT CHALLENGE THE NUMBER OF EMPLOYEES IN THE BARGAINING UNIT, SINCE THE PARTIES DID NOT SPECIFICALLY DIRECT THEIR ATTENTION TO THE STATUS OF MR. CLERC, THE APPLICANT WAS ENTITLED TO CHALLENGE MR. CLERC'S STATUS AT THE TIME THE VOTERS' LIST WAS SETTLED.

4. THE BOARD ACCORDINGLY DIRECTS MR. J. E. LEONARD, EXAMINER, TO INQUIRE INTO AND REPORT TO THE BOARD ON THE DUTIES AND RESPONSIBILITIES OF WILLIAM CLERC.

5. THE BOARD DIRECTS THAT MR. CLERC BE PERMITTED TO VOTE AND THAT HIS BALLOT BE SEGREGATED AND NOT COUNTED PENDING THE FURTHER DIRECTION OF THE BOARD.

6. THE BOARD FURTHER DIRECTS THAT THE BALLOT BOX CONTAINING ALL THE BALLOTS CAST IN THE REPRESENTATION VOTE IN THIS MATTER SHALL BE SEALED AND THE BALLOTS SHALL NOT BE COUNTED PENDING THE FURTHER DIRECTION OF THE BOARD.

18975-70-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. TRADE-WOODS MANOR NURSING HOME LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS J. D. BELL AND A. MAIN.

APPEARANCES AT THE HEARING: W. V. SASSO AND W. A. ACTON FOR THE APPLICANT; C. A. MORLEY AND R. PARTON FOR THE RESPONDENT; R. B. CUMINE AND KATHERINE PREYER FOR THE GROUP OF EMPLOYEES.

DECISION OF THE BOARD: MAY 17, 1971.

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3. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

4. ON THE SCHEDULE B FILED BY THE RESPONDENT THERE APPEARED THE NAME OF ONLY ONE PERSON. THIS PERSON IS A MEMBER OF THE APPLICANT. IT IS THE POLICY OF THE BOARD, WHERE THE NAME OF ONLY ONE EMPLOYEE APPEARS ON SCHEDULE B, WHERE THIS PERSON IS A MEMBER OF THE APPLICANT AND WHERE THE APPLICANT HAS REQUESTED THE INCLUSION OF PART-TIME EMPLOYEES IN THE BARGAINING UNIT, TO DETERMINE AN APPROPRIATE UNIT SO AS TO INCLUDE PART-TIME EMPLOYEES. HOWEVER, IT IS NOT THE PRACTICE OF THE BOARD TO INCLUDE PART-TIME EMPLOYEES IN AN APPROPRIATE UNIT WHERE THERE IS A HISTORY OF AN EMPLOYER EMPLOYING MORE THAN ONE PART-TIME EMPLOYEE. THE RESPONDENT INFORMED THE BOARD THAT IN THE PAST IT HAD MORE THAN ONE PART-TIME EMPLOYEE AND ANTICIPATED HAVING MORE THAN ONE PART-TIME EMPLOYEE IN THE NEAR FUTURE. THE APPLICANT DID NOT DISPUTE THE REPRESENTATIONS OF THE RESPONDENT ON THIS POINT BUT RATHER STATED THAT IT HAD NO KNOWLEDGE OF THE RESPONDENT'S PAST PRACTICE AND WOULD RELY ON THE REPRESENTATIONS OF THE RESPONDENT ON THIS POINT.

5. HAVING REGARD TO THE FOREGOING AND TO THE REPRESENTATIONS OF THE PARTIES, THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT FORT ERIE, SAVE AND EXCEPT PROFESSIONAL AND MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, MAINTENANCE SUPERVISOR, KITCHEN SUPERVISOR, HOUSEKEEPING SUPERVISOR, PERSONS ABOVE THE RANK OF SUPERVISOR, TECHNICAL PERSONNEL, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

6. IN THIS APPLICATION FOR CERTIFICATION WHICH WAS FILED ON FEBRUARY 8, 1971, THE APPLICANT FILED EVIDENCE OF MEMBERSHIP ON BEHALF OF TWELVE PERSONS ON A LIST OF EMPLOYEES CONSISTING OF SEVENTEEN NAMES FOR THE PURPOSES OF THE COUNT. THERE WAS ALSO FILED A STATEMENT OF DESIRE IN OPPOSITION TO THIS APPLICATION FOR CERTIFICATION CONTAINING THE NAMES OF NINE PERSONS. FOUR OF THE PERSONS WHOSE NAMES APPEARED ON THE STATEMENT OF DESIRE WERE ALSO CLAIMED BY THE APPLICANT AS MEMBERS. IF THE BOARD WERE TO GIVE WEIGHT TO THE STATEMENT OF DESIRE, THE APPLICANT WOULD HAVE QUALIFIED EVIDENCE OF MEMBERSHIP FOR LESS THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT WHICH WOULD ENTITLE THE APPLICANT TO OUTRIGHT CERTIFICATION. THE BOARD THEREFORE INQUIRED INTO THE ORIGINATION, PREPARATION AND CIRCULATION OF THE STATEMENT OF DESIRE AND ALSO HEARD EVIDENCE IN CONNECTION WITH THE APPLICANT'S ALLEGATIONS OF IMPROPER OR IRREGULAR CONDUCT REGARDING THE STATEMENT OF DESIRE.

7. THE BOARD HEARD EVIDENCE FROM MRS. KATHERINE PREYER, A NURSE IN THE EMPLOY OF THE RESPONDENT, AND HER HUSBAND MR. WILLIAM PREYER, WHO IS NOT AN EMPLOYEE OF THE RESPONDENT, CONCERNING THE ORIGINATION, PREPARATION AND CIRCULATION OF THE STATEMENT OF DESIRE. ON THE BASIS OF THE UNCONTRADICTED EVIDENCE OF MR. AND MRS. PREYER THE BOARD FINDS THAT THE STATEMENT OF DESIRE FILED WITH THE BOARD ORIGINATED WITH MR. AND MRS. PREYER AND WAS PREPARED AT THEIR HOME BY MR. PREYER. SEVEN OF THE NINE SIGNATURES ON THE STATEMENT OF DESIRE WERE OBTAINED AT THE HOME OF MR. AND MRS. PREYER WHILE THE OTHER TWO SIGNATURES WERE OBTAINED AT THE RESPECTIVE HOMES OF THESE TWO PERSONS.

8. WHILE THE APPLICANT FILED SEVERAL ALLEGATIONS OF IMPROPER OR IRREGULAR CONDUCT IN CONNECTION WITH THE STATEMENT OF DESIRE, IT ABANDONED OR FAILED TO CALL EVIDENCE ON ALL OF ITS ALLEGATIONS WITH THE EXCEPTION OF AN ALLEGATION RELATING TO MR. LINDSEY PARTON. THE APPLICANT ALLEGED THAT:

"ON OR ABOUT FEBRUARY 16TH, 1971, LINDSAY PARTON, PART OWNER OF THE RESPONDENT AND SON OF THE MANAGER, WHO IN THE USUAL COURSE OF HIS DUTIES SUPERVISES EMPLOYEES OF THE RESPONDENT, APPROACHED LAURA WILCOX, AN EMPLOYEE OF THE RESPONDENT AT THE RESPONDENT'S PREMISES AND ATTEMPTED TO PERSUADE HER TO SIGN THE PETITION. FURTHER LINDSEY PARTON TELEPHONED MRS. EVELYN REAMAN, AN EMPLOYEE OF THE RESPONDENT AND ATTEMPTED TO INFLUENCE HER TO SUPPORT THE PETITION."

9. MRS. LAURA WILCOX AND MRS. ELIZABETH GORDON, WHO ARE EMPLOYEES OF THE RESPONDENT, WERE CALLED TO GIVE EVIDENCE BY THE APPLICANT AND MR. LINDSEY PARTON WAS CALLED TO GIVE EVIDENCE BY THE RESPONDENT.

10. MR. LINDSEY PARTON INFORMED THE BOARD THAT HE IS TWENTY-THREE YEARS OLD AND IS EMPLOYED BY THE RESPONDENT AS A MAINTENANCE MAN WHICH INVOLVES TENDING TO THE FURNACES AND WASHROOM FACILITIES, CLEANING WINDOWS, PERFORMING CARPENTRY WORK AND PLUMBING. HE WORKS A FORTY-HOUR WEEK AND IS THE SON OF THE OWNERS MR. AND MRS. PARTON, SR., AND THE BROTHER OF THE ADMINISTRATOR OF THE RESPONDENT, MR. ROSS PARTON. HE TESTIFIED THAT, AS FAR AS HE KNOWS, THE RESPONDENT IS OWNED BY HIS PARENTS AND THAT HE HAD NO INTEREST IN THE OWNERSHIP OF THE RESPONDENT. HE GAVE EVIDENCE THAT HE HAS NO SUPERVISORY RESPONSIBILITY IN HIS EMPLOYMENT AND THAT HE HAS NEVER INFORMED ANY OF THE EMPLOYEES OF THE RESPONDENT THAT HE HAS ANY SUPERVISORY AUTHORITY. HE INFORMED THE BOARD THAT WHEN HIS BROTHER IS ABSENT FROM HIS POSITION AS ADMINISTRATOR, THEN HIS PARENTS RUN THE NURSING HOME. HE

TESTIFIED THAT IF HE SAW THAT ONE OF THE PATIENTS REQUIRED ATTENTION HE WOULD INFORM THE APPROPRIATE MEMBER OF THE STAFF AND HAD ON OCCASIONS BEEN REQUESTED TO TELEPHONE OTHER EMPLOYEES WITH MESSAGES CONCERNING HOURS OF WORK.

11. MR. LYNDEY PARTON FRANKLY ADMITTED THAT HE HAD DISCUSSED THIS APPLICATION FOR CERTIFICATION AND THE STATEMENT OF DESIRE IN OPPOSITION TO THIS APPLICATION WITH MEMBERS OF HIS FAMILY. HE ALSO GAVE EVIDENCE THAT THESE SAME MATTERS WERE INTENSELY DISCUSSED BY THE EMPLOYEES AFFECTED BY THIS APPLICATION AND THAT TWO GROUPS EXISTED AT THE NURSING HOME - ONE GROUP IN FAVOUR OF THE APPLICANT AND A SECOND GROUP OPPOSED TO THE APPLICANT. HE MADE HIS POSITION QUITE CLEAR TO MOST OF THE OTHER EMPLOYEES AT THE NURSING HOME, NAMELY, THAT HE WAS OPPOSED TO THE APPLICANT AND AN ADHERENT TO THE SECOND GROUP.

12. MR. LYNDEY PARTON INFORMED THE BOARD THAT HIS BROTHER, MR. ROSS PARTON, HAD NEVER SPOKEN TO THE EMPLOYEES ABOUT THE APPLICANT, THE APPLICATION OR THE STATEMENT OF DESIRE BUT THAT HIS MOTHER HAD SPOKEN TO TWO EMPLOYEES ABOUT THE STATEMENT OF DESIRE AT THEIR REQUEST. THERE WAS NO INDICATION, HOWEVER, AT WHICH POINT OF TIME HIS MOTHER SPOKE TO THE TWO EMPLOYEES OR OF WHAT WAS DISCUSSED.

13. MRS. LAURA WILCOX AND MR. LYNDEY PARTON DISCUSSED THE APPLICATION FOR CERTIFICATION AND THE STATEMENT OF DESIRE IN OPPOSITION TO THE APPLICATION. HE GAVE EVIDENCE THAT HE SPOKE TO MRS. WILCOX AND TO OTHER EMPLOYEES ABOUT THE APPLICANT AND THAT AT THE END OF THE CONVERSATION, MRS. WILCOX DECIDED TO SIGN A PIECE OF PAPER IN OPPOSITION TO THE APPLICANT. MR. LYNDEY PARTON THEN TOOK THE PIECE OF PAPER TO HIS BROTHER WHO DID NOT WANT TO KNOW ABOUT IT AND ADMONISHED HIM THAT HE SHOULD NOT OBTAIN SIGNATURES ON THE RESPONDENT'S PREMISES. AT THIS POINT, WHICH WAS NEAR THE END OF MRS. WILCOX'S SHIFT, MR. LYNDEY PARTON ASKED HER IF SHE WOULD GO WITH HIM TO THE HOME OF MRS. PREYER AND SIGN THE STATEMENT OF DESIRE THERE. SHE AGREED THAT HE SHOULD DRIVE HER TO MRS. PREYER'S HOME WHERE SHE INDICATED TO MRS. PREYER THAT SHE WISHED TO SIGN THE STATEMENT OF DESIRE AND DID SIGN HER NAME TO IT.

14. MRS. WILCOX'S EVIDENCE REGARDING HER UNDERSTANDING OF MR. LYNDEY PARTON'S POSITION IN THE RESPONDENT'S ESTABLISHMENT IS FAR FROM CLEAR. ON THE ONE HAND SHE SAID THAT HE WAS IN CHARGE WHEN MR. ROSS PARTON WAS ABSENT AND ON THE OTHER HAND THAT HE DID NOT GIVE ANY ORDERS TO ANYONE. MRS. ELIZABETH GORDON GAVE EVIDENCE THAT, ALTHOUGH AN EMPLOYEE IN THE BARGAINING UNIT, SHE WAS NOT APPROACHED BY MR. LYNDEY PARTON TO SIGN THE STATEMENT OF DESIRE IN OPPOSITION TO THE APPLICANT. SHE TESTIFIED CONCERNING HER UNDERSTANDING OF MR. LYNDEY PARTON'S POSITION IN THE RESPONDENT'S ESTABLISHMENT. IT APPEARS TO THE BOARD THAT MRS. GORDON'S UNDERSTANDING IS BASED UPON

INFORMATION RECEIVED AT LEAST SECOND HAND FROM OTHER EMPLOYEES OF THE RESPONDENT AND WHICH WAS REFUTED BY THE EVIDENCE OF MR. LYNDESEY PARTON. AS IN THE CASE OF MRS. WILCOX, MRS. GORDON ALSO STATED THAT MR. LYNDESEY PARTON IS IN CHARGE WHEN MR. ROSS PARTON IS AWAY. HOWEVER, UPON CROSS-EXAMINATION, IT BECAME READILY APPARENT THAT NEITHER MRS. WILCOX NOR MRS. GORDON HAD ANY BASIS FOR SO STATING. IN OUR OPINION, NEITHER OF THESE TWO PERSONS BELIEVED THAT MR. LYNDESEY PARTON WAS A PERSON WHO EXERCISED MANAGERIAL FUNCTIONS OR WHO WAS IN A POSITION TO AFFECT THEIR EMPLOYMENT RELATIONSHIP WITH THE RESPONDENT.

15. ON THE BASIS OF THE EVIDENCE BEFORE US, THE BOARD FINDS THAT MR. ROSS PARTON TOOK NO PART IN THE ORIGINATION, PREPARATION AND CIRCULATION OF THE STATEMENT OF DESIRE. INDEED, THE EVIDENCE CONCERNING MR. ROSS PARTON INDICATED THAT ALTHOUGH HE APPARENTLY KNEW ABOUT THE STATEMENT OF DESIRE, HE CLEARLY INDICATED THAT HE DESIRED TO HAVE NOTHING TO DO WITH IT. THE BOARD ALSO FINDS THAT MR. LYNDESEY PARTON IS AN EMPLOYEE IN THE BARGAINING UNIT WHO DID NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND WHO WAS NOT REGARDED BY THE OTHER EMPLOYEES AS BEING IN A POSITION TO AFFECT THEIR EMPLOYMENT RELATIONSHIP WITH THE RESPONDENT. MR. LYNDESEY PARTON WAS IN FACT A MEMBER OF THE PROPOSED BARGAINING UNIT EXPRESSING HIS VIEWS ON THIS APPLICATION FOR CERTIFICATION.

16. HAVING REGARD TO ALL OF THE EVIDENCE CONCERNING THE ORIGINATION, PREPARATION AND CIRCULATION OF THE STATEMENT OF DESIRE FILED WITH THE BOARD, WE ARE SATISFIED THAT IT REPRESENTS A VOLUNTARY EXPRESSION OF THE TRUE WISHES OF THE EMPLOYEES WHO SIGNED IT. THE BOARD ACCORDINGLY FINDS THAT THE STATEMENT OF DESIRE SUFFICIENTLY WEAKENS THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT SO AS TO CAUSE THE BOARD TO SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE.

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20. THE MATTER IS REFERRED TO THE REGISTRAR.

322-71-U: THE NIAGARA SOUTH BOARD OF EDUCATION (APPLICANT) V. THOMAS ANDERSON ET AL (RESPONDENTS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS O. HODGES AND J. E. C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: R. C. FILION, F. J. ROTLAND AND J. H. YEO FOR THE APPLICANT; S. SIMPSON, J. BEATTIE AND C. G. MURPHY FOR THE RESPONDENTS.

DECISION OF VICE-CHAIRMAN RORY F. EGAN AND BOARD MEMBER J. E. C. ROBINSON, Q.C.: MAY 17, 1971.

1. THIS IS AN APPLICATION FOR A DECLARATION THAT A STRIKE ENGAGED IN BY EMPLOYEES OF THE APPLICANT IS UNLAWFUL. THE APPLICATION WAS FILED APRIL 22, 1971. ON THE SAME DATE THE APPLICANT MADE AN APPLICATION (BOARD FILE NO. 323-71-U) FOR A DECLARATION THAT THE SAID STRIKE WAS CALLED OR AUTHORIZED BY CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 486, WHICH IS THE BARGAINING AGENT FOR THE EMPLOYEES OF THE APPLICANT HEREIN. BOTH APPLICATIONS CAME ON FOR HEARING BY THE BOARD AT THE SAME TIME. COUNSEL FOR THE PARTIES INVOLVED AGREED THAT THE EVIDENCE IN THE INSTANT CASE WOULD APPLY TO THE APPLICATION UNDER BOARD FILE NO. 323-71-U.
2. THERE IS NO DISPUTE THAT ON WEDNESDAY, APRIL 21, 1971, CERTAIN EMPLOYEES OF THE APPLICANT EMPLOYED AT ITS NIAGARA-THOROLD DISTRICT ENGAGED IN A STRIKE. IT IS FURTHER AGREED THAT THE STRIKE WHICH DID NOT INVOLVE ALL OF THE APPLICANT'S EMPLOYEES, WAS THE FIRST OF A PLANNED ROTATION OF STRIKES. IT WAS AGREED THAT THE STRIKE HAD BEEN CALLED BY CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 486.
3. IT IS THE CONTENTION OF THE APPLICANT THAT A COLLECTIVE AGREEMENT WAS IN OPERATION AT THE TIME OF THE STRIKE AND THAT, THEREFORE, NOTWITHSTANDING THE FACT THAT THE APPROPRIATE NUMBER OF DAYS HAD ELAPSED SINCE RELEASE OF NOTICE FROM THE MINISTER THAT HE DID NOT DEEM IT ADVISABLE TO APPOINT A BOARD, THE STRIKE IS UNLAWFUL BY VIRTUE OF THE PROVISIONS OF SECTION 54(1) OF THE LABOUR RELATIONS ACT.
4. THE RESPONDENTS, ON THE OTHER HAND, CONTEND THAT THE STRIKE IS LAWFUL BOTH BECAUSE OF THE LAPSE OF THE NECESSARY TIME AFTER THE NOTICE AND BECAUSE THERE IS NO COLLECTIVE AGREEMENT IN FORCE.
5. ARTICLE 37 OF THE COLLECTIVE AGREEMENT IN QUESTION IS AS FOLLOWS:

ARTICLE 37 - DURATION OF AGREEMENT

37.01 THIS AGREEMENT SHALL BECOME EFFECTIVE AS OF JANUARY 1ST, 1969 AND SHALL REMAIN IN FULL FORCE AND EFFECT UNTIL DECEMBER 31ST, 1970.

37.02 THIS AGREEMENT SHALL BE AUTOMATICALLY RENEWED FROM YEAR TO YEAR THEREAFTER, UNLESS NOTICE BY REGISTERED MAIL IS GIVEN BY EITHER PARTY TO THE OTHER PARTY FOR AMENDMENT NOT LESS THAN THIRTY (30) DAYS, NOR MORE THAN SIXTY (60) DAYS

PRIOR TO DECEMBER 31ST, 1970, OR ANY ANNIVERSARY OF SUCH DATE.

37.03 IN THE EVENT OF NOTICE BEING GIVEN, NEGOTIATIONS SHALL BEGIN WITHIN FIFTEEN (15) DAYS FOLLOWING RECEIPT OF NOTIFICATION OR UNLESS MUTUALLY AGREED OTHERWISE.

37.04 DURING NEGOTIATIONS UPON ANY PROPOSED NEW OR REVISED AGREEMENT, THIS AGREEMENT SHALL REMAIN IN FULL FORCE AND EFFECT UNTIL A NEW OR REVISED AGREEMENT IS SIGNED.

6. REFERENCE WAS MADE BY BOTH PARTIES TO THE PROVISIONS OF SECTION 39(1) AND (2) OF THE ACT AND IN PARTICULAR WITH RESPECT TO 39(2) AS IT RELATES TO CLAUSE 37.04 OF THE AGREEMENT, SECTION 39(1) AND (2) IS AS FOLLOWS:

39. (1) IF A COLLECTIVE AGREEMENT DOES NOT PROVIDE FOR ITS TERM OF OPERATION OR PROVIDES FOR ITS OPERATION FOR AN UNSPECIFIED TERM OR FOR A TERM OF LESS THAN ONE YEAR, IT SHALL BE DEEMED TO PROVIDE FOR ITS OPERATION FOR A TERM OF ONE YEAR FROM THE DATE THAT IT COMMENCED TO OPERATE.

(2) NOTWITHSTANDING SUBSECTION 1, THE PARTIES MAY, BEFORE OR AFTER A COLLECTIVE AGREEMENT HAS CEASED TO OPERATE, AGREE TO CONTINUE ITS OPERATION OR ANY OF ITS PROVISIONS FOR A PERIOD OF LESS THAN ONE YEAR WHILE THEY ARE BARGAINING FOR ITS RENEWAL, WITH OR WITHOUT MODIFICATIONS OR FOR A NEW AGREEMENT, BUT SUCH CONTINUED OPERATION DOES NOT BAR AN APPLICATION FOR CERTIFICATION OR FOR A DECLARATION THAT THE TRADE UNION NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT.

7. IT SEEMS ABUNDANTLY CLEAR TO US FROM A READING OF THE LANGUAGE EMPLOYED IN CLAUSE 37.04 THAT THE PARTIES, EACH FOR ITS OWN PROPER ENDS NO DOUBT, WERE ATTEMPTING TO PRESERVE THE AGREEMENT UNTIL SUCH TIME AS A NEW ONE CAME INTO EFFECT. IT IS BEYOND QUESTION THAT THE EXTENSION EMBRACED THE WHOLE OF THE AGREEMENT AND NOT MERELY SOME OF ITS PROVISIONS. THE PARTIES WERE FREE TO LIMIT THE COVERAGE OF THE EXTENSION UNDER 39(2) IF THEY HAD SO DESIRED. THEY ELECTED TO DO OTHERWISE AND ATTEMPTED TO CONTINUE THE WHOLE AGREEMENT "IN FULL

FORCE AND EFFECT" DURING NEGOTIATIONS UNTIL A NEW OR REVISED AGREEMENT WAS REACHED.

8. THE FIRST QUESTION BEFORE US, THEREFORE, IS WHETHER THE INTENT OF THE PARTIES AS SET OUT IN THE CLAUSE IN QUESTION CANNOT BE IMPLEMENTED BECAUSE THE CLAUSE DOES NOT COMPLY WITH OR VIOLATES THE PROVISIONS OF SECTION 39(2) OF THE ACT.

9. IT WAS ARGUED BY THE RESPONDENTS THAT ALTHOUGH CLAUSE 37.04 MAY HAVE BEEN DESIGNED TO PROLONG THE TERM OF OPERATION OF THE COLLECTIVE AGREEMENT, IT WAS NOT FRAMED SO AS TO FALL WITHIN THE PROVISIONS OF SECTION 39(2) OF THE ACT AND STOOD, IN FACT, IN VIOLATION OF THE ACT. THE RESPONDENTS ALSO SUBMITTED THAT THE CLAUSE OUGHT TO BE DECLARED VOID AND SEVERED FROM THE REMAINDER OF THE AGREEMENT BECAUSE IT IS VAGUE AND INDEFINITE AS TO ITS DURATION AND WAS INCAPABLE OF ENFORCEMENT.

10. IT WAS ACCEPTED BY COUNSEL FOR BOTH PARTIES THAT SECTION 39(2) CONTAINS ITS OWN TIME LIMITATION. THAT IS TO SAY, THAT ANY EXTENSION ATTEMPTED BY THE PARTIES COULD ONLY BE EFFECTIVE FOR A PERIOD OF LESS THAN A YEAR. THE RESPONDENTS CONTENDED, HOWEVER, THAT COMPLIANCE WITH SECTION 39(2) ALSO REQUIRES A SPECIFIC FIXED TERM FOR THE EXTENSION WITHIN THE GENERAL LIMITATION PRESCRIBED BY THE CLAUSE BECAUSE OF THE USE OF THE WORD "PERIOD".

11. IN OUR OPINION, SECTION 39(2) LEAVES IT OPEN TO THE PARTIES TO EXTEND THE AGREEMENT AT WILL WHILE THEY BARGAIN FOR ITS REPLACEMENT OR RENEWAL WITHIN THE GENERAL TIME LIMITATION. THERE IS NO LANGUAGE IN THE SUBSECTION, AS WE READ IT, INDICATING DIRECTLY OR INFERENTIALLY THAT THE PARTIES MUST SET PRECISE TIME LIMITS TO THE EXTENSION THEY AGREE UPON. IN OUR OPINION, ANY ATTEMPT TO READ THE SUBSECTION AS STANDING FOR THAT PROPOSITION WOULD COME CLOSER TO LEGISLATING THAN INTERPRETATING. WE BELIEVE THE INTENT OF THE LEGISLATION TO BE, HAVING IN MIND THE WORDS "WHILE BARGAINING" EMPLOYED LATER IN THE CLAUSE, THAT THE PARTIES SHOULD BE FREE TO EXTEND THE AGREEMENT FROM DAY TO DAY IF THEY WISH OR, ON THE OTHER HAND, FOR SUCH DEFINITE PERIODS AS THEY MAY AGREE UPON WHILE BARGAINING, SUBJECT ONLY TO THE TIME LIMITATION SET OUT IN THE SUBSECTION ITSELF.

12. WE ARE, THEREFORE, OF THE OPINION THAT THE ABSENCE OF A STATED PERIOD OF EXTENSION IN THE CLAUSE IN QUESTION DOES NOT CAUSE IT TO BE IN VIOLATION OF NOR RENDER IT INVALID UNDER THE PROVISIONS OF SECTION 39(2) OF THE ACT. WE MIGHT ADD THAT, WE DO NOT BELIEVE THAT THE USE OF THE WORD "NEGOTIATIONS" IN THE CLAUSE RATHER THAN "BARGAINING" AS IN THE ACT, RENDERS THE CLAUSE INOPERATIVE OR INVALID UNDER THE SUBSECTION AS WAS SUGGESTED BY THE RESPONDENTS.

13. A SECOND MATTER SAID BY THE RESPONDENTS TO INVALIDATE THE CLAUSE IN RELATION TO THE ACT IS THAT UNDER THE ACT THE PARTIES MAY ONLY AGREE TO CONTINUE THE AGREEMENT WHILE THEY ARE BARGAINING FOR A RENEWAL OF OR FOR A NEW AGREEMENT. IF WE CORRECTLY UNDERSTAND THE RESPONDENTS TO MEAN BY THIS THAT THE AGREEMENT TO EXTEND MUST BE MADE DURING THE ACTUAL COURSE OF BARGAINING AND THAT IT MAY NOT BE MADE IN THE ORIGINAL DOCUMENT, WE CANNOT AGREE. THE LANGUAGE OF SECTION 39(2) IS WIDE ENOUGH TO PERMIT BOTH COURSES OF ACTION.

14. IT ALSO APPEARED TO BE A CONTENTION OF THE RESPONDENTS THAT A CESSATION OF BARGAINING BRINGS AN END TO AN EXTENSION AGREEMENT FOR THE REASON THAT SUCH AN AGREEMENT CAN ONLY SUBSIST UNDER THE ACT WHILE THE PARTIES ARE BARGAINING. WHATEVER VALIDITY THAT MIGHT HAVE AS A GENERAL PROPOSITION IT HAS NO APPLICATION IN THE PRESENT CIRCUMSTANCES. THE EVIDENCE DISCLOSES THAT NEGOTIATIONS WERE OPEN AT THE TIME THE STRIKE TOOK PLACE ON APRIL 21, 1971. AS LATE AS APRIL 17, 1971 THE UNION WROTE THE FOLLOWING LETTER TO THE APPLICANT:

"DEAR SIR:

AT OUR MEETING THIS MORNING THE MEMBERSHIP OF LOCAL 468 REJECTED THE BOARD'S PROPOSALS.

IF THE BOARD WISHES TO HOLD FURTHER MEETINGS WITH THE NEGOTIATING COMMITTEE, TO CHANGE THEIR POSITION, THE UNION WILL BE RECEPTIVE.

IN THE MEANTIME, THE UNION WILL CONFER WITH THEIR SOLICITOR REGARDING LEGAL ACTION."

IN OUR VIEW, THE LETTER IS CLEARLY AN INVITATION TO CONTINUE BARGAINING AND AN INDICATION OF A WILLINGNESS TO PARTICIPATE.

15. FURTHERMORE, WE CONSIDER IT IMPORTANT IN THESE CIRCUMSTANCES TO POINT OUT THAT THE CLAUSE IN QUESTION PROVIDES FOR BARGAINING THROUGH TO AN AGREEMENT. THAT BEING SO, WE DO NOT THINK IT IS OPEN TO ONE OF THE PARTIES TO BASE ITS ARGUMENT THAT THAT AGREEMENT NO LONGER SUBSISTS BECAUSE BARGAINING HAS CEASED UPON ITS OWN BREACH OF THE AGREEMENT.

16. A FURTHER GENERAL PROPOSITION OF THE RESPONDENTS WAS THAT IN ANY EVENT THE CLAUSE IN THE AGREEMENT WAS SO VAGUE AND INDEFINITE THAT IT OUGHT TO BE DECLARED VOID AND SEVERED FROM THE REST OF THE AGREEMENT.

17. IT IS QUITE CLEAR, HOWEVER, THAT THE CLAUSE, READ IN CONJUNCTION WITH SECTION 39(2), UPON WHICH IT RESTS, OBVIOUSLY PROVIDES

FOR THE CONTINUATION OF THE AGREEMENT IN FULL FORCE AND EFFECT UNTIL A NEW OR REVISED AGREEMENT IS REACHED THROUGH NEGOTIATIONS OR, BY VIRTUE OF THE ACT, THE TIME LIMITS UNDER SECTION 39(2) EXPIRE.

18. IT WAS FURTHER ARGUED THAT THE EXTENSION OUGHT NOT TO BE READ AS DEPRIVING THE RESPONDENTS OF THE RIGHT TO STRIKE UNLESS THE LANGUAGE IS CLEAR AND UNMISTAKABLE. AS WAS INDICATED EARLIER, IT WAS OPEN TO THE PARTIES TO RESTRICT THE EXTENSION AGREEMENT TO COVER EITHER THE WHOLE AGREEMENT OR ANY OF ITS PROVISIONS. THEY CHOSE TO KEEP THE WHOLE AGREEMENT IN FULL FORCE AND EFFECT AND THUS MUST BE TAKEN TO HAVE INTENDED TO CONTINUE THE NO STRIKE AND NO LOCKOUT PROVISIONS IN FORCE AND TO RELY UPON NEGOTIATION OUTSIDE THOSE RESOURCES TO BRING ABOUT AGREEMENT. THE PARTIES FASHIONED THAT YOKE THEMSELVES AND CANNOT BE HEARD TO COMPLAIN WHEN IT COMMENCES TO GALL.

19. WE, THEREFORE, FIND THAT AT THE TIME OF THE STRIKE AND AT THE PRESENT TIME THERE IS A COLLECTIVE AGREEMENT IN FORCE BETWEEN THE PARTIES. CONSEQUENTLY, WE DECLARE THAT THE STRIKE ENGAGED IN BY THE RESPONDENTS HEREIN AND CALLED BY THE UNION IS CONTRARY TO THE PROVISIONS OF THE LABOUR RELATIONS ACT AND THE COLLECTIVE AGREEMENT.

DECISION OF BOARD MEMBER O. HODGES: MAY 17, 1971.

1. I DISSENT.

2. IN MY RESPECTFUL SUBMISSION THE PUBLIC POLICY AS EXPRESSED BY THE LABOUR RELATIONS ACT S.54 IS THAT A STRIKE OR LOCK-OUT IS LAWFUL UNDER S.54(2) WHEN THE TIMES EXPRESSED BY S.54(2)(A) OR (B) HAVE ELAPSED: I.E. (A) SEVEN DAYS; (B) FOURTEEN DAYS. SECTION 54 (1) AND (2) READS AS FOLLOWS:

54(1) WHERE A COLLECTIVE AGREEMENT IS IN OPERATION, NO EMPLOYEE BOUND BY THE AGREEMENT SHALL STRIKE AND NO EMPLOYER BOUND BY THE AGREEMENT SHALL LOCK OUT SUCH AN EMPLOYEE.

(2) WHERE NO COLLECTIVE AGREEMENT IS IN OPERATION, NO EMPLOYEE SHALL STRIKE AND NO EMPLOYER SHALL LOCK OUT AN EMPLOYEE UNTIL THE MINISTER HAS APPOINTED A CONCILIATION OFFICER OR A MEDIATOR UNDER THIS ACT AND,

(A) SEVEN DAYS HAVE ELAPSED AFTER THE MINISTER HAS RELEASED TO THE PARTIES THE REPORT OF A CONCILIATION BOARD OR MEDIATOR; OR

- (B) FOURTEEN DAYS HAVE ELAPSED AFTER THE MINISTER HAS RELEASED TO THE PARTIES A NOTICE THAT HE DOES NOT DEEM IT ADVISABLE TO APPOINT A CONCILIATION BOARD,

AS THE CASE MAY BE.

3. THE PARTIES MAY AGREE TO CONTINUE THE OPERATION OF THE COLLECTIVE AGREEMENT OR ANY OF ITS PROVISIONS FOR A PERIOD OF LESS THAN ONE YEAR WHILE THEY ARE BARGAINING FOR ITS RENEWAL S.39(2).

4. IN MY OPINION, ANY AGREEMENT TO CONTINUE THE OPERATION OF A COLLECTIVE AGREEMENT "WHILE THEY ARE BARGAINING FOR ITS RENEWAL" MUST BE AN AD HOC AGREEMENT; A COLLECTIVE AGREEMENT ITSELF CANNOT PROPERLY INCLUDE IN ITS ORIGINAL PROVISIONS AN INDEFINITE EXTENSION THAT WOULD INTERFERE WITH THE NORMAL PROCESS OF COLLECTIVE BARGAINING GUARANTEED BY THE ACT.

5. IN THE CASE OF NEW METHOD LAUNDRY AND DRY CLEANERS, AND RAYMOND WILLIAMS AND H. LEROY SMITH AND THUNDER BAY GENERAL WORKERS UNION, C.C.L., LOCAL 314, BOARD FILE NO. 16,059 DATED JANUARY 17, 1957;

"APPLICATION FOR CONSENT TO INSTITUTE A PROSECUTION - FOR FAILURE TO BARGAIN IN GOOD FAITH AND MAKE EVERY REASONABLE EFFORT TO MAKE AN AGREEMENT - WHETHER OBLIGATION TO BARGAIN OF EMPLOYER AFFECTED BY CHANGE IN OWNERSHIP - CHANGE IN PARTNERSHIP DO NOT CREATE NEW LEGAL ENTITY - PARTNERS HELD LIABLE TO BARGAINING OBLIGATION - WHETHER OBLIGATION TO BARGAIN CONTINUES AFTER CONCILIATION BOARD REPORT - OBLIGATION TO BARGAIN SET OUT IN S. 11 VERY KEYSTONE OF THE ACT - OBLIGATION TO BARGAIN NOT EXTINGUISHED ALTHOUGH MATURE AND EXTENT OF OBLIGATION MAY VARY - NO USEFUL PURPOSE SERVED IN PRESENT CASE BY GRANTING CONSENT TO PROSECUTE - APPLICATION DISMISSED - THE LABOUR RELATIONS ACT, 1950, R.S.O., c. 194 AS AM., ss. 10, 11, 35, 44, 49(2), 53, 65.

SEE ONT. ¶60,325; 60,326; 60,356; 60,369;
60,381; 60,385; 60,399.

CHAIRMAN J. FINKELMAN, AS HE THEN WAS, SAID:

"OBLIGATION TO BARGAIN VERY KEYSTONE OF ACT

I AM UNABLE TO FIND ANYTHING IN THE LEGISLATION WHICH WOULD SUPPORT SUCH A CONCLUSION. THE OBLIGATION TO BARGAIN SET OUT IN SECTION 11 IS THE VERY KEYSTONE OF THE ACT; ALL OTHER PROVISIONS ARE OF AN ANCILLARY NATURE. THE ACT CONTEMPLATES THAT IF THE BARGAINING BETWEEN THE PARTIES IS CHARACTERIZED BY GOOD FAITH AND REASON, THEY WILL SUCCEED IN NEGOTIATING AND EXECUTING A COLLECTIVE AGREEMENT. SINCE THESE QUALITIES ARE LESS LIKELY TO BE PRESENT WHEN INDUSTRIAL WARFARE HAS BROKEN OUT, THE LEGISLATION PROHIBITS RESORT TO SUCH WARFARE FOR A STATED PERIOD WHILE THE PARTIES ENDEAVOUR TO COMPOSE THEIR DIFFERENCES EITHER THROUGH THEIR OWN EFFORTS OR ULTIMATELY, IF NECESSARY, WITH THE ASSISTANCE OF A CONCILIATION OFFICER AND, IN A PROPER CASE, A CONCILIATION BOARD. BUT TO SAY THAT THE OBLIGATION TO BARGAIN COMES TO AN END ONCE THE LABOURS OF THE CONCILIATION OFFICER AND THE CONCILIATION BOARD HAD PROVED UNAVAILING IS TANTAMOUNT TO SAYING THAT THE WHOLE ELABORATE STRUCTURE ESTABLISHED BY THE ACT FOR THE SOLUTION OF INDUSTRIAL DISPUTES IS DESIGNED TO PROVIDE, NOT A RATIONAL AND CIVILIZED ALTERNATIVE TO INDUSTRIAL WARFARE, BUT RATHER AN OPPORTUNITY FOR THE PARTIES TO TAKE STOCK OF THEIR RESOURCES BEFORE THEY RESORT TO WARFARE. IT IS INCONCEIVABLE THAT THE LEGISLATURE INTENDED THAT, ONCE THE CONCILIATION PROCEDURE HAS BEEN EXHAUSTED, DIFFERENCES BETWEEN EMPLOYERS AND TRADE UNIONS ARE TO BE RESOLVED BY BRUTE FORCE ALONE, AND WE SHOULD STRIVE TO VOID A CONSTRUCTION OF THE ACT WHICH LEADS TO SUCH AN UNTOWARD RESULT UNLESS THAT CONSTRUCTION IS FORCED UPON AS BY CLEAR AND UNEQUIVOCAL LANGUAGE..... THE EXISTENCE OF A BARGAINING IMPASSE IN SUCH CIRCUMSTANCES (AFTER CONCILIATION) DOES NOT DESTROY THE AUTHORITY OF THE UNION TO SEEK TO PERSUADE THE EMPLOYER TO ACCEPT THE POSITION OF THE GROUP AS TO THE PARTICULAR TERMS THAT SHOULD GOVERN THE EMPLOYMENT RELATIONSHIP. IF THE POSITION OF COUNSEL FOR THE RESPONDENT SMITH IS SOUND, SECTION 44 WOULD

BECOME FOR ALL PRACTICAL PURPOSES A PROTECTION FOR THE EMPLOYER AGAINST HAVING TO BARGAIN WITH ANYONE RATHER THAN A PROTECTION OF THE UNION'S RIGHT TO BARGAIN WITH THE EMPLOYER. ONCE THE TIME LIMITS FIXED BY SECTION 49(2) HAVE ELAPSED, THE PARTIES MAY, IF THEY SO DESIRE, HAVE RECOURSE TO THE STRIKE OR LOCK-OUT AS AN ADDITIONAL MEANS OF PERSUASION. INDEED THE CALLING OF A STRIKE OR THE INSTITUTING OF A LOCK-OUT IS NOT AN ALTERNATIVE OR A SUBSTITUTE FOR BARGAINING, IT IS IN ITS VERY ESSENCE PART AND PARCEL OF THE BARGAINING PROCESS AND HAS BEEN SO RECOGNIZED SINCE THE LATTER PART OF THE NINETEENTH CENTURY. IF WE WERE TO HOLD OTHERWISE WE WOULD BE SAYING IN EFFECT THAT, ONCE A STRIKE HAS BEEN CALLED OR A LOCK-OUT INSTITUTED, GOOD FAITH AND REASON ARE NO LONGER TO HAVE ANY PLACE IN THE RELATIONSHIP BETWEEN THE PARTIES.
(UNDERLINING IS MINE)

6. THE DISTINGUISHED CHAIRMAN SAID IN THE ABOVE QUOTED DECISION, AS UNDERLINED, "THE LEGISLATION PROHIBITS RESORT TO SUCH WARFARE FOR A STATED PERIOD" AND, LATER IN THAT DECISION SAID - "INDEED THE CALLING OF A STRIKE OR THE INSTITUTING OF A LOCK-OUT IS NOT AN ALTERNATIVE OR A SUBSTITUTE FOR BARGAINING, IT IS IN ITS VERY ESSENCE PART AND PARCEL OF THE BARGAINING PROCESS AND HAS BEEN SO RECOGNIZED SINCE THE LATTER PART OF THE NINETEENTH CENTURY".

7. THE UNION SERVED NOTICE TO BARGAIN UPON THE APPLICANT PURSUANT TO ARTICLE 37.02 OF THE COLLECTIVE AGREEMENT ON NOVEMBER 2, 1970. THE PARTIES MET AND NEGOTIATED ON JANUARY 28, 1971 AND FEBRUARY 11, 1971. CONCILIATION SERVICES WERE APPLIED FOR ON FEBRUARY 15, 1971 AND ON MARCH 15, 1971 THE CONCILIATION OFFICER CONVENED A MEETING OF THE PARTIES. ON MARCH 18, 1971 THE PARTIES AGAIN MET TO NEGOTIATE. THE DEPUTY MINISTER OF LABOUR ADVISED THE PARTIES BY LETTER DATED MARCH 23, 1971 THAT A BOARD OF CONCILIATION WOULD NOT BE APPOINTED.

8. ON MARCH 25, 1971 THE APPLICANT APPLIED FOR MEDIATION SERVICES AND THE PARTIES MET WITH A MEDIATION OFFICER ON APRIL 5TH AND 6TH, 1971. ON APRIL 16, 1971 ANOTHER MEDIATION OFFICER CONVENED A MEETING OF THE PARTIES, WITH STILL ANOTHER MEETING SCHEDULED FOR APRIL 23, 1971. HOWEVER, ON APRIL 21, 1971, SOME OF THE EMPLOYEES WENT ON STRIKE. THE UNION ADVISED THE APPLICANT THAT A STRIKE IN THE FORM OF A SERIES OF ROTATING STRIKES HAD BEEN CALLED.

9. "NEGOTIATIONS" AND "BARGAINING" HAVE A LIKE MEANING IN COMMON USE. THERE CAN BE NO QUESTION OF THE DESIRE, INTEREST AND DETERMINATION OF THE UNION TO FIND GROUND FOR A SETTLEMENT, PARTICULARLY IN THE LIGHT OF THE POST-CONCILIATION MEETINGS AT MEDIATION THAT WERE INITIATED BY THE EMPLOYER. THESE MEETINGS, WHETHER FOR THE PURPOSE OF "NEGOTIATIONS", AS CALLED FOR BY ARTICLE 37.03 OF THE COLLECTIVE AGREEMENT, OR FOR "BARGAINING" AS IN SECTION 39(2) OF THE ACT, HAVE NO DISTINGUISHING DIFFERENCE, IN MY OPINION, THE END BEING SOUGHT IS OBVIOUSLY AND MUST BE A COLLECTIVE AGREEMENT. THE WORDS ARE BUT SYMBOLS OF THE METHOD.

10. THERE IS EMINENT AUTHORITY FOR THE PREMISE THAT A STRIKE OR LOCK-OUT IS PART OF THE BARGAINING PROCESS, AS QUOTED EARLIER HEREIN. THAT BEING SO, TO DENY THE USE OF THESE TOOLS TO ACHIEVE A COLLECTIVE AGREEMENT WHEN ALL OF THE LEGAL PROCESS PRECEDENT TO A LAWFUL STRIKE OR LOCK-OUT HAS BEEN EXERCISED, MUST BE CONTRARY TO WHAT THE LEGISLATION INTENDS. A STRIKE OR A LOCK-OUT AT ANY TIME WHEN ARTICLE 37.04 OF THE COLLECTIVE AGREEMENT COULD APPLY, CANNOT THEREFORE BE HELD TO BE A BREACH OF THE AGREEMENT, UNLESS THERE IS SPECIFIC CLEAR LANGUAGE EXPRESSING A "NO STRIKE-NO-LOCKOUT" UNDERTAKING DURING THE EXTENSION.

11. IN THIS CASE, EVERY EFFORT SHORT OF A STRIKE WAS MADE TO ACHIEVE A SETTLEMENT. IT CAN BE READILY UNDERSTOOD THAT NOTHING MORE APPEARED TO BE AVAILABLE TO TRADE, CONCEDE OR GAIN BY TALKING. ARE THE PARTIES THEN TO RETIRE FROM THE BARGAINING TABLE, AND PLACIDLY WAIT FOR TIME TO RUN OUT? OBVIOUSLY, HUMAN DESIRE AND IMPATIENCE FOR ACTION CANNOT BE SATISFIED THAT WAY. THE MAJORITY DECISION PUTS COLLECTIVE BARGAINING IN LIMBO FOR WHATEVER PERIOD OF 364 DAYS REMAIN AFTER THE TIME EXPRESSED BY SECTION 54(2)(B) HAS EXPIRED. THE ESSENTIALS TO FREE COLLECTIVE BARGAINING, THE POSSIBILITY OF A STRIKE IN FACT, ARE DENIED THE UNION. THE EMPLOYER, IN EVERY PRACTICAL SENSE, IS EXCUSED FROM BARGAINING. THERE IS NO DOUBT THAT IN THIS CASE THE UNION IS FRUSTRATED IN ITS EFFORTS TO BARGAIN.

12. MY FINDING IS THAT ARTICLE 37.04 OF THIS COLLECTIVE AGREEMENT AND LIKE CLAUSES IN OTHER COLLECTIVE AGREEMENTS, SHOULD ANY SUCH EXIST, ARE ULTRA VIRES OF INCLUSION IN A COLLECTIVE AGREEMENT AND THEREFORE BEYOND THE POWER OF ENFORCEMENT BY ARBITRATION UNDER THE TERMS OF THE COLLECTIVE AGREEMENT OR THE LABOUR RELATIONS ACT. IT THEREFORE FOLLOWS THAT THE APPLICATION OF THE NIAGARA SOUTH BOARD OF EDUCATION AND THOMAS ANDERSON ET AL MUST BE DISMISSED.

26-70-U: AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (COMPLAINANT) V. PASQUALE BROS. LIMITED (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS P. J. O'KEEFFE AND J. E. C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: VINCENT GENTILE AND B. A. DUNN FOR THE APPLICANT; F. R. VON VEH, T. PASQUALE AND F. MATUCCI FOR THE RESPONDENT.

DECISION OF VICE-CHAIRMAN RORY F. EGAN AND BOARD MEMBER J. E. C. ROBINSON, Q.C.: MAY 19, 1971.

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2. THE COMPLAINANT, PURSUANT TO THE PROVISIONS OF SECTION 65 OF THE LABOUR RELATIONS ACT, ALLEGES THAT DOMINIONI MARCO, FERRANTONE ALBERTO, LEPONE ITALO VITTORIO AND BARTOLOMEO GIOVANNI HAVE BEEN DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTIONS 50(A) (B) AND (C) AND 59 OF THE ACT. THE COMPLAINANT REQUESTS THAT THESE PERSONS BE REINSTATED IN EMPLOYMENT WITH FULL COMPENSATION FOR LOSS OF EMPLOYMENT AND SENIORITY RIGHTS.

3. IT IS NOT DISPUTED THAT THE EMPLOYEES WERE TERMINATED ON FEBRUARY 12, 1971. ALBERTO FERRANTONE WAS REEMPLOYED BY THE RESPONDENT ON MARCH 22, 1971.

4. THE ONLY EVIDENCE BEFORE THE BOARD WAS ADDUCED BY THE COMPLAINANT. THE RESPONDENT MOVED AT THE CONCLUSION OF THE COMPLAINANT'S EVIDENCE THAT THE COMPLAINT BE DISMISSED AND, OF COURSE, DID NOT CALL EVIDENCE.

5. THE EVIDENCE OF MR. GENTILE, AN ORGANIZER FOR THE COMPLAINANT, WAS THAT IN NOVEMBER 1970, TWO ORGANIZATIONAL MEETINGS WERE HELD AT THE HOME OF DOMINIONI. ON JANUARY 27, 1971, A CERTIFICATE WAS GRANTED BY THE BOARD TO THE COMPLAINANT. A GENERAL MEETING WAS HELD, FOLLOWING CERTIFICATION, ON FEBRUARY 7, 1971 AT THE UNION HALL. THIS MEETING WAS ATTENDED BY 37 EMPLOYEES. MR. GENTILE SAID THAT 27 UNION CARDS WERE SIGNED. HE TESTIFIED THAT DOMINIONI WAS ACTIVE IN THE UNION AND THAT BARTOLOMEO WAS NOT ACTIVE AT THE START BUT BECAME SO LATER. THERE IS NO EVIDENCE AS TO THE NATURE OR EXTENT OF THESE ACTIVITIES WITH THE EXCEPTION OF THAT RELATING TO THE MEETINGS HELD IN DOMINIONI'S HOUSE IN NOVEMBER. THERE IS ALSO NO EVIDENCE AS TO WHETHER FERRANTONE OR LEPONE WERE ACTIVE IN OR, INDEED, WERE MEMBERS OF THE UNION. MR. GENTILE STATED THAT BECAUSE OF WHAT HE ALLEGED WAS COMPANY INTERFERENCE WITH A PREVIOUS ATTEMPT TO ORGANIZE THE RESPONDENT'S EMPLOYEES IN 1968, THE COMPLAINANT HAD BEEN VERY CAREFUL TO SEE THAT THE COMPANY DID NOT FIND OUT ANYTHING IN THIS INSTANCE.

6. DOMINIONI HAD BEEN EMPLOYED BY THE RESPONDENT AS A TRUCK DRIVER AND PLANT WORKER FOR FIVE YEARS. HE TESTIFIED THAT AT THE TIME OF HIS TERMINATION THE RESPONDENT WAS EMPLOYING NINE TRUCK DRIVERS. TWO OF THESE DRIVERS HAD WORKED FOR THE RESPONDENT FOR LESS TIME THAN DOMINIONI. HIS EVIDENCE IS THAT HE WAS CALLED INTO THE OFFICE OF TED PASQUALE WHERE HE WAS CONFRONTED BY THE LATTER AND BY NITO PASQUALE, EDWARD PASQUALE, AND BY MATTUCI AND GALEOTTI, THE LATTER TWO BEING MANAGERS.
7. TED PASQUALE ASKED DOMINIONI TO EXPLAIN AN ALLEGED DISCREPANCY IN AN EXPENSE VOUCHER SUBMITTED BY DOMINIONI WITH RESPECT TO A MOTEL ACCOUNT. THE ACTUAL EXPENSE WAS \$12.60 FOR OVERNIGHT ACCOMMODATION WHILE ON THE COMPANY'S BUSINESS, WHEREAS THE VOUCHER, WHICH WAS FILED, SHOWS THE FIGURE OF \$18.60. DOMINIONI SAID, AT THE MEETING, THAT HE DID NOT KNOW HOW THE BILL CAME TO BE CHANGED AND STATED THAT HE HAD NOT CHANGED IT.
8. DOMINIONI SAID THAT EDWARD PASQUALE, WHO IS THE FATHER OF THE OTHER PASQUALES NAMED ABOVE, SEEMED VERY DISTURBED ABOUT THE BILL. ASKED IF ANYTHING WAS SAID ABOUT THE UNION, DOMINIONI SAID THAT NOTHING WAS SAID BUT THAT HE, DOMINIONI UNDERSTOOD PASQUALE WAS REFERRING TO THE UNION WHEN DURING THE INTERVIEW HE SAID "I HAVE MADE YOU EARN \$10,000.00 AND NOW YOU HAVE DONE THIS TO ME". DOMINIONI, AT FIRST, STATED THAT NOTHING MORE WAS SAID. LATER, HOWEVER, HE TOLD HIS COUNSEL THAT EDWARD PASQUALE HAD SAID THAT HE, DOMINIONI, HAD ALSO STOLEN FROM ANOTHER ESTABLISHMENT. HE THEN ADDED THAT PASQUALE HAD SAID, "UP TO NOW I HAVE TREATED YOU AS A SON. I MADE YOU EARN \$10,000.00 A YEAR - GO HOME BECAUSE YOU HAVE ALSO STOLEN FROM TORONTO MACARONI." IN CROSS-EXAMINATION, DOMINIONI AGREED THAT PASQUALE HAD SAID TO HIM, "YOU EARN \$10,000.00 A YEAR AND YOU ARE NOW CHANGING THE BILL TO GET AN EXTRA \$6.00." ON BEING RE-EXAMINED BY HIS COUNSEL, DOMINIONI STATED THAT PASQUALE ALSO SAID TO HIM, "IF YOU NEEDED \$6.00 YOU COULD HAVE ASKED FOR IT AND YOU WOULD HAVE GOT IT."
9. INsofar AS THE REFERENCE TO TORONTO MACARONI IS CONCERNED IT APPEARS FROM DOMINIONI'S EVIDENCE THAT HE WAS ACCUSED BY THAT COMPANY CONCERNING THE LOSS OF BILLS FOR \$200.00 - \$300.00. THE MATTER CAME TO COURT BUT NO ONE APPEARED FOR THE COMPANY CONCERNED AND THE CASE WAS DISMISSED. WE ADVERT TO THIS SIMPLY TO INDICATE THAT THERE WAS SOME SUBSTANCE TO PASQUALE'S REFERENCE TO THE INCIDENT. WE WOULD ADD THAT WE, OF COURSE, MAKE NO FINDING AS TO THE GUILT OR INNOCENCE OF DOMINIONI WITH RESPECT TO ANY OF THE ACCUSATIONS MADE BY PASQUALE OR THE MACARONI COMPANY. OUR SOLE CONCERN IS WITH THE TRUE REASON FOR HIS TERMINATION.
10. BARTOLOMEO TESTIFIED THAT HE HAD BEEN EMPLOYED BY THE RESPONDENT FOR ABOUT 8 YEARS PRIOR TO HIS TERMINATION ON FEBRUARY

12, 1971. HE STATED THAT THERE WERE TWO DRIVERS WHO HAD GREATER SERVICE THAN HE DID. ONE WAS DOMINIONI AND THE OTHER AN EMPLOYEE BY THE NAME OF BRUNO. HE SAID THAT PASQUALE HAD NINE TRUCKS BEFORE THE LAY-OFF AND THAT HE BELIEVES THERE ARE NOW SEVEN. ON FEBRUARY 12, 1971, HE WAS CALLED TO THE OFFICE AND IN THE PRESENCE OF THE PASQUALES AND TWO SUPERVISORS, WAS TOLD TO GO HOME BECAUSE THERE WAS NO WORK. HE WAS TOLD THAT THE COMPANY WAS GOING TO SEND GOODS TO SUDBURY BY TRANSPORT AND THAT THE PASQUALE TRUCKS WOULD NOT BE USED.

11. THE WITNESS RECEIVED A LETTER FROM THE COMPANY PURPORTING TO EXPLAIN THE REASONS FOR HIS TERMINATION. THE LETTER WAS ENTERED BY THE COMPLAINANT AFTER BEING IDENTIFIED BY BARTOLOMEO. IT READS AS FOLLOWS:

"MR. GIOVANNI BARTOLOMEO,
1105 ST. CLARENS AVENUE,
TORONTO, ONTARIO.

DEAR GIOVANNI:

DUE TO THE DRASTIC CHANGES THAT HAVE TAKEN PLACE IN THE FOOD INDUSTRY IN THE PAST MONTHS COUPLED WITH THE ECONOMIC CONDITIONS, IT IS REGRETFULLY NECESSARY TO TERMINATE YOUR EMPLOYMENT WITH US EFFECTIVE TODAY, FEBRUARY 12, 1971.

ENCLOSED IS A CHEQUE COVERING TERMINATION PAY FOR FOUR WEEKS, HOLIDAY PAY PLUS OVERTIME PAY DUE YOU.

YOURS SINCERELY,

EDWARD C. PASQUALE, JR.
PRESIDENT"

ON RECEIPT OF THE LETTER, BARTOLOMEO WENT HOME. IT IS NOTEWORTHY THAT IN HIS TESTIMONY HE MADE NO ATTEMPT TO ESTABLISH ANY CONNECTION WITH OR ACTIVITY ON BEHALF OF THE UNION.

12. AS THE RESULT OF QUESTIONS FROM THE BOARD, IT WAS ESTABLISHED THAT THE TERMINATIONS WERE AT "JUST THE RIGHT TIME." THAT IS TO SAY, THEY TOOK PLACE ON A REGULAR PAY DAY.

13. LEPONE WAS EMPLOYED AS A HELPER ON THE PASQUALE TRUCKS FOR FIVE MONTHS PRIOR TO FEBRUARY 12, 1971. HE SIMPLY STATED THAT ON THAT DATE HE WAS TOLD TO GO HOME FOR A PERIOD OF TIME BECAUSE OF SCARCITY OF WORK - HE INSISTED THAT HE WAS NOT FIRED.

14. FERRANTONE HAD BEEN EMPLOYED BY THE RESPONDENT FOR 5 1/2 YEARS UNTIL HIS EMPLOYMENT CEASED ON FEBRUARY 12, 1971. HE WAS CALLED BACK TO WORK ON MARCH 22, 1971. HE TESTIFIED THAT PASQUALES OWNED NINE TRUCKS. OF THESE, SEVEN ARE NOW IN USE. THE OTHER TWO ARE OLD. THEY ARE PARKED IN THE YARD AND HAVE NOT BEEN USED SINCE HIS RETURN TO WORK. HE WAS ASKED IF ANY OVERTIME HAD BEEN WORKED SINCE HIS RETURN. HE SAID HE KNEW OF NONE.

15. MR. GENTILE TESTIFIED THAT NO ONE HAD BEEN HIRED TO REPLACE THE THREE EMPLOYEES WHO WERE NOT CALLED BACK TO WORK. MR. GENTILE WAS QUESTIONED WITH RESPECT TO THE BUSINESS CONDITIONS IN THE INDUSTRY. HE SAID THAT CONDITIONS IN THE FOOD SUPPLY AREA ARE A BIT WEAK AT THE MOMENT. HE SAID THAT IN THE MIDDLE OF JANUARY THERE WAS A BIT OF WEAKNESS. HE ADDED THAT THIS CONDITION HAD NOT EXISTED IN DECEMBER. HE SAID THAT FROM ABOUT THE MIDDLE OF JANUARY TO THE PRESENT, THINGS WERE BECOMING STEADILY BETTER. THIS EVIDENCE SUPPORTS THE REASONS GIVEN BY THE COMPANY IN THE TERMINATION LETTER FILED BY THE COMPLAINANT AND TO WHICH REFERENCE IS MADE ABOVE. MR. GENTILE ALSO CONFIRMED THAT THE FOUR EMPLOYEES CONSTITUTED TWO CREWS OF TWO TRUCKS, I.E. DRIVERS AND HELPERS. THIS CONFORMS TO THE EVIDENCE OF FERRANTONE TO THE EFFECT THAT TWO TRUCKS WERE LAID UP.

16. THE COMPLAINANT ARGUED THAT THE FOREGOING EVIDENCE WAS SUFFICIENT, IN THE ABSENCE OF A CREDIBLE EXPLANATION OF ITS ACTIONS BY THE COMPANY, TO ESTABLISH THAT THE RESPONDENT WAS IN VIOLATION OF THE LABOUR RELATIONS ACT IN ITS DEALINGS WITH THE EMPLOYEES CONCERNED. IN SUPPORT OF ITS CONTENTION, THE COMPLAINANT CITED THE NATIONAL AUTOMATIC VENDING Co. LTD. CASE, 63 CLLC ¶ 16,278 AND THE STATEMENTS OF THE BOARD THEREIN RELATING TO THE ONUS OF PROOF AND THE SHIFT THEREOF IN CASES WHERE THE SUBJECT MATTER OF AN ALLEGATION LIES PECULIARLY WITHIN THE KNOWLEDGE OF ONE OF THE PARTIES. THE COMPLAINANT ARGUES THAT ITS EVIDENCE SHIFTS THE ONUS TO THE RESPONDENT - THAT THE RESPONDENT HAS OFFERED NO EXPLANATION OF ITS ACTIONS AND THAT CONSEQUENTLY, THE BOARD OUGHT TO RULE IN FAVOUR OF THE COMPLAINANT.

17. IT SHOULD BE OBSERVED AT THIS POINT THAT THERE IS NO EVIDENCE BEFORE THE BOARD, DIRECT OR INFERENTIAL, WHICH ESTABLISHES ANY KNOWLEDGE ON THE PART OF THE RESPONDENT OF ANY UNION ACTIVITY BY, OR INDEED, OF MEMBERSHIP IN THE UNION OF ANY OF THE EMPLOYEES WITH WHOM WE ARE HERE CONCERNED. THIS IS SERIOUS DEFICIENCY IN THE COMPLAINANT'S CASE. THERE WAS, IT IS TRUE, AN INVITATION BY DOMINIONI TO DRAW THE INFERENCE FROM PART OF WHAT WAS SAID TO HIM AT HIS TERMINATION THAT HE WAS BEING LET GO BECAUSE OF THE UNION. A PROPER CONSIDERATION OF THE ENTIRE CONVERSATION THAT TOOK PLACE AT THAT TIME, HOWEVER, COMPELS THE CONCLUSION THAT THAT INFERENCE CANNOT BE REASONABLY SUSTAINED ON THE EVIDENCE.

18. IN CONSIDERING THE ARGUMENT OF THE COMPLAINANT, THE BOARD, NO MATTER HOW MUCH THE COMPLAINANT MIGHT SEEK TO REJECT OR DENIGRATE PART OF ITS OWN EVIDENCE, MUST HAVE REGARD FOR ALL THE CRIDIBLE TESTIMONY ELICITED BEFORE IT. ON THE TOTALITY OF THE EVIDENCE, THE BOARD FINDS THAT THE COMPLAINANT HAS NOT MADE OUT A CASE OF VIOLATION OF THE ACT SO AS TO PLACE AN ONUS UPON THE RESPONDENT TO REPLY. EVEN IF IT COULD BE SAID THAT THE RESPONDENT ON A SELECTION OF ITS EVIDENCE VIEWED IN ISOLATION HAD MADE OUT A PRIMA FACIE CASE, IT IS PLAIN THAT ANY ONUS THAT MIGHT THUS HAVE RESULTED HAS BEEN LIFTED BY THE BALANCE OF THE COMPLAINANT'S OWN TESTIMONY. THAT IS TO SAY, THE UNCONTRADICTED EVIDENCE OF THE COMPLAINANT ITSELF SUPPLIES REASONABLE AND CREDIBLE EXPLANATIONS FOR THE RESPONDENT'S ACTIONS, WHICH PLAINLY INDICATE THAT THEY DO NOT CONSTITUTE AN OFFENCE UNDER THE PROVISIONS OF THE LABOUR RELATIONS ACT.

19. IN VIEW OF THE COMPLAINANT'S RELIANCE UPON THE DISSERTATION ON ONUS CONTAINED IN THE NATIONAL AUTOMATIC VENDING CASE CITED ABOVE, WE WOULD QUOTE AND RESPECTFULLY ADOPT THE FOLLOWING STATEMENTS CONTAINED IN THAT DECISION:

"NEEDLESS TO SAY, HOWEVER, WE DO NOT FOR A MOMENT SUGGEST, IN PROCEEDINGS, UNDER SECTION 65, THAT UNLESS THERE IS EVIDENCE TO THE CONTRARY, DISCRIMINATION MAY BE FOUND AGAINST AN EMPLOYER UPON WHAT AMOUNTS TO MERE PROOF OF A CONTRACT OF HIRING AND DISMISSAL. A COMPLAINANT MAY, HOWEVER, BY PROVING THE CONTRACT OF HIRING, THE DISMISSAL, AND CERTAIN OTHER OBJECTIVE FACTS AND CIRCUMSTANCES, SHORT OF DIRECT EVIDENCE OF DISCRIMINATION, CAST SUCH AN ONUS OF CREDIBLE EXPLANATION ON THE EMPLOYER, WHO ALONE MAY KNOW OR HAVE THE MEANS OF KNOWLEDGE OF THE ACTUAL REASONS FOR THE DISMISSAL, THAT IF SUCH AN EXPLANATION IS NOT GIVEN, AN INFERENCE MAY READILY BE DRAWN THAT THE TREATMENT ACCORDED THE EMPLOYEE WAS DISCRIMINATORY AND CONTRARY TO THE ACT. THAT IT IS OFTEN ONLY THE EMPLOYER WHO HAS THE KNOWLEDGE OR MEANS OF KNOWLEDGE OF THE ACTUAL REASONS FOR THE DISCHARGE IS, OF COURSE, ONLY ONE FACTOR OR CIRCUMSTANCE WHICH THE BOARD MAY TAKE INTO ACCOUNT IN ASSESSING THE EVIDENCE AS A WHOLE AND DECIDING WHAT WEIGHT TO GIVE TO IT. IT PLAINLY CANNOT RELIEVE THE COMPLAINANT OF THE PRIMARY BURDEN OF PROOF TO

SATISFY THE BOARD BY CREDIBLE EVIDENCE THAT THE ACTION TAKEN BY THE EMPLOYER WAS DISCRIMINATORY AND CONTRARY TO THE ACT."

20. FOR ALL OF THE FOREGOING REASONS THE APPLICATION IS DISMISSED.

DECISION OF BOARD MEMBER P. J. O'KEEFE: MAY 19, 1971.

1. THE INDUSTRIAL SCENE IN THIS MATTER IS, UNFORTUNATELY, COMMONPLACE IN OUR INDUSTRIAL RELATIONS. A UNION COMES ON THE SCENE AND THE TRANQUILITY OF THE PAST IS DISTURBED, STRANGE EVENTS TAKE PLACE.
2. EMPLOYEES WHO IN THE PAST HAVE HAD A GOOD RELATIONSHIP WITH MANAGEMENT ARE NOW SUSPECT. PEOPLE ARE DISCHARGED, LAID OFF, OSTRACISED, ACCUSED OF DISLOYALTY, ETC.
3. IN THE INSTANT CASE A UNION HAS COME ON THE SCENE - THERE IS A PAST HISTORY OF MANAGEMENT INTERFERENCE IN THE CHOICE OF THEIR EMPLOYEES TO JOIN THE UNION OF THEIR CHOICE, FOUR EMPLOYEES HAD THEIR EMPLOYMENT TERMINATED AT A MINUTE'S NOTICE.
4. EMPLOYEE MARCO DOMINIONI TESTIFIED THAT HE HAD BEEN EMPLOYED BY THE RESPONDENT COMPANY FOR FIVE YEARS AS A PLANT WORKERS AND TRUCK DRIVER. THERE HAD NEVER BEEN ANY COMPLAINTS ABOUT HIS WORK. HE TESTIFIED THAT THE MANAGEMENT OF THE COMPANY HAD ALWAYS BEEN FRIENDLY TO HIM AND THAT HE AND OTHER EMPLOYEES WERE TREATED WELL BY THEM. THE COMPANY HAD EIGHT TRUCKS UNTIL NOVEMBER LAST YEAR AT WHICH TIME THEY SECURED TWO MORE FOR A TOTAL OF TEN. THERE WERE NINE DRIVERS WITH THE COMPANY AND TWO OF THOSE HAD LESS SENIORITY THAN HIMSELF, WITH ONE AND TWO YEARS' SENIORITY RESPECTIVELY.
5. ON OR ABOUT FEBRUARY 12, 1971, DOMINIONI WAS CALLED INTO THE OFFICE OF HIS EMPLOYER, TED PASQUALE; ALSO PRESENT AT THE MEETING WERE, NITO AND EDWARD PASQUALE AND COMPANY MANAGERS MATTUCI AND GALETTI.
6. DOMINIONI WAS ASKED TO EXPLAIN AN ALLEGED FALSIFICATION WITH RESPECT TO A MOTEL CHARGE WHICH HE HAD PREVIOUSLY SUBMITTED ON HIS ROAD EXPENSE ACCOUNT. DOMINIONI ADMITTED THAT THE ACTUAL EXPENSE WAS FOR \$12.60 AND THAT WHEN HE SUBMITTED THE BILL IT WAS FOR THAT AMOUNT.
7. APPARENTLY SOMEONE HAD CHANGED THE BILL TO READ \$18.60. DOMINIONI TESTIFIED THAT HE DID NOT CHANGE THE BILL AT ANY TIME, THE CHANGE IN THE BILL WAS NOT IN HIS WRITING.

8. FROM THE UNDISPUTED EVIDENCE OF DOMINIONI IT IS CLEAR THAT WHOEVER FALSIFIED THE BILL DID SO AFTER HE HAD PUT IT INTO THE OFFICE; SUCH FALSIFICATION TOOK PLACE WHILE IN THE POSSESSION OF THE COMPANY.

9. IT APPEARS FROM THE EVIDENCE OF DOMINIONI THAT EDWARD PASQUALE, THE FATHER OF THE OTHER PASQUALES, WAS NOT SATISFIED WITH THE PLEA OF INNOCENCE PUT FORTH BY THE ACCUSED, DOMINIONI, AND EDWARD PASQUALE, THE BOSS, SETS HIMSELF UP AS JUDGE, JURY AND LAST RESORT AND FINDS DOMINIONI GUILTY. HE THEN GOES FURTHER AND DREDGES UP FROM THE PAST A COMPLETELY UNFOUNDED ALLEGATION THAT DOMINIONI HAD IN THE PAST ALSO STOLEN FROM THE TORONTO MACARONI COMPANY.

10. DOMINIONI'S EVIDENCE ON THE TORONTO MACARONI ALLEGATION WAS TO THE EFFECT THAT HE WAS ACCUSED FIVE YEARS PREVIOUSLY CONCERNING THE LOSS OF \$200.00-\$300.00. THE MATTER CAME TO COURT BUT THERE WAS NO EVIDENCE BEFORE THE COURT ON THIS SERIOUS CHARGE AND THE MATTER WAS DISMISSED BY THE COURTS.

11. THE BOARD IS NOT CALLED ON TO MAKE A FINDING OF INNOCENCE OR GUILT ON THE ACCUSATIONS OF PASQUALE AGAINST DOMINIONI BUT, HAVING HAD TO REITERATE THE EVIDENCE WITH RELATION TO THESE SERIOUS ALLEGATIONS, IT IS ONLY FAIR TO SAY IN THE INTEREST OF DOMINIONI, HIS FAMILY, FRIENDS AND ACQUAINTANCES THAT ON THE BASIS OF THE EVIDENCE BEFORE US AND IN THE ABSENCE OF HIS ACCUSER AT THE BOARD HEARING, AND INDEED THE ABSENCE OF ANY CONTRARY EVIDENCE BY THE PASQUALES, THEN THE FUNDAMENTAL TENET OF OUR JUSTICE MUST APPLY NAMELY, THAT MARCO DOMINIONI IS ENTIRELY INNOCENT OF THE SERIOUS CHARGES MADE AGAINST HIS HONESTY AND CHARACTER ON THE SIMPLE GROUND THAT HE IS INNOCENT UNTIL PROVEN GUILTY.

12. EVIDENCE ESTABLISHED THAT TWO UNION ORGANIZATIONAL MEETINGS WERE HELD AT THE HOME OF DOMINIONI. THE WITNESS, DOMINIONI, TESTIFIED THAT HE UNDERSTOOD EDWARD PASQUALE WAS REFERRING TO THE UNION WHEN DURING THE CONFRONTATION ALREADY MENTIONED PASQUALE HAD SAID, "I HAVE MADE YOU EARN \$10,000.00 AND NOW YOU HAVE DONE THIS TO ME."

13. THE NEXT DISMISSED EMPLOYEE, WITNESS GIOVANNI BARTOLOMEO, TESTIFIED THAT HE HAD BEEN EMPLOYED BY THE COMPANY FOR EIGHT YEARS. THE COMPANY HAD A TOTAL OF NINE DRIVERS, TWO OF THESE DRIVERS HAD GREATER SENIORITY THAN HIMSELF. HE WORKED 55 TO 60 HOURS PER WEEK. AT ABOUT 2:00 P.M. ON FEBRUARY 12TH BARTOLOMEO WAS CALLED INTO THE OFFICE. HE WAS CONFRONTED BY FIVE MANAGEMENT PEOPLE INCLUDING EDWARD PASQUALE AND HIS SONS, TED AND NITO. HE WAS TOLD HE HAD TO GO HOME BECAUSE MANAGEMENT HAD A GAS BILL APPARENTLY INVOLVING A QUESTION AS TO WHETHER THE AMOUNT SHOULD HAVE BEEN \$10.80 OR \$20.80. BARTOLOMEO OBJECTED SAYING THAT HIS HAPPENED IN NOVEMBER 1970 AND "YOU'RE TALKING ABOUT IT NOW." HE WAS ALSO TOLD THAT THERE WAS NO

WORK NOW BECAUSE THE COMPANY WAS SENDING GOODS TO SUDBURY BY OTHER TRANSPORT AND COMPANY TRUCKS WERE NOT BEING USED. THIS MEETING LASTED FOUR TO FIVE MINUTES. HE WAS GIVEN HIS TERMINATION DOCUMENTATION, INCLUDING A LETTER WHICH SAID IN PART:

"DUE TO THE DRASTIC CHANGES THAT HAVE TAKEN PLACE IN THE FOOD INDUSTRY IN THE PAST MONTHS COUPLED WITH THE ECONOMIC CONDITIONS, IT IS REGRETFULLY NECESSARY TO TERMINATE YOUR EMPLOYMENT WITH US EFFECTIVE TODAY, FEBRUARY 12, 1971."

14. IT WAS ESTABLISHED EARLIER THROUGH THE EVIDENCE OF VINCENT GENTILE, UNION ORGANIZER, THAT GIOVANNI BARTOLOMEIO WAS ACTIVE IN THE UNION, NOT AT THE START BUT BECAME SO LATER.

15. THE THIRD AGGRIEVED WITNESS, VITTORIO LEPONE, TESTIFIED THAT HE HAD BEEN EMPLOYED FOR FIVE MONTHS AS A HELPER ON THE TRUCK. HE WAS HELPER TO THE PREVIOUS WITNESS, GIOVANNI BARTOLOMEIO. HE, LIKE THE PREVIOUS WITNESSES, WAS CALLED INTO THE OFFICE AT ABOUT 2:30 P.M. ON FEBRUARY 12 AND HE FACED THE FIVE MANAGEMENT PERSONNEL ALREADY NAMED. THIS MEETING LASTED A MINUTE OR TWO. HE SAID THAT HE WAS NOT FIRED BUT WAS JUST TOLD TO GO HOME FOR A LITTLE WHILE. HE DID NOT RECEIVE A TERMINATION LETTER.

16. THE FOURTH AND FINAL AGGRIEVED WITNESS, ALBERTO FERRANTONE, TESTIFIED THAT HE HAD BEEN EMPLOYED BY THE RESPONDENT FOR 5 1/2 YEARS. HE WAS A TRUCK HELPER. HE HAD NO KNOWLEDGE OF THE DISPUTED MOTEL BILL RELATED TO THE FIRST AGGRIEVED WITNESS, MARCO DOMINIONI, BECAUSE THE DRIVER ALWAYS PAID THE BILL. HE WAS TERMINATED AT THE SAME TIME AS THE THREE OTHER EMPLOYEES. PRIOR TO HIS TERMINATION HE WORKED AN AVERAGE OF 60-65 HOURS PER WEEK AT \$2.00 AN HOUR. AFTER HIS TERMINATION HE SOUGHT WORK IN MANY PLACES BUT WAS UNABLE TO FIND ANY UNTIL HE WAS CALLED BACK TO WORK WITH THE RESPONDENT ON MARCH 22, 1971. HE GAVE FURTHER EVIDENCE OF CONDITIONS BACK AT WORK AFTER HIS RETURN, AS OUTLINED IN PARAGRAPH 14 OF THE MAJORITY DECISION.

17. ALL 4 AGGRIEVED WITNESSES ESTABLISHED DAMAGES SUFFERED BY THEM.

18. VINCENT GENTILE, UNION ORGANIZER, TESTIFIED THAT THE RESPONDENT COMPANY HAD INTERFERED WITH THE UNION'S ORGANIZING EFFORTS IN 1968 AND, BECAUSE OF THIS PAST HISTORY OF ANTI-UNION BEHAVIOR, THE UNION THIS TIME TOOK CAREFUL PRECAUTIONS SO THAT THE COMPANY WOULD NOT FIND OUT THEY WERE ORGANIZING. THE UNION HELD A MEETING OF THE EMPLOYEES AFTER THEY HAD APPLIED FOR CERTIFICATION AND THE UNION WAS BEING VERY SECRETIVE AGAIN TO PREVENT THE EMPLOYER FROM

BECOMING AWARE OF THE UNION ORGANIZING. THE UNION WAS CERTIFIED AS BARGAINING AGENT FOR THE EMPLOYEES ON JANUARY 27, 1971. THE UNION HELD AN OPEN GENERAL MEETING ON FEBRUARY 7, 1971 WHICH WAS ATTENDED BY 37 EMPLOYEES. THE UNION HAD GIVEN NOTICE TO BARGAIN ON FEBRUARY 8TH, 1971 TO THE RESPONDENT. GENTILE TESTIFIED THAT NO NEW EMPLOYEES HAD BEEN HIRED TO REPLACE THE DISMISSED EMPLOYEES. THE FOUR AGGRIEVED EMPLOYEES CONSTITUTED TWO TRUCK CREWS. CONDITIONS IN THE FOOD SUPPLY INDUSTRY ARE A BIT WEAK AT THE MOMENT. THERE WAS ALSO A BIT OF WEAKNESS IN THE MIDDLE OF JANUARY; THIS DID NOT APPLY IN DECEMBER. FROM ABOUT THE MIDDLE OF JANUARY TO THE PRESENT, THINGS WERE BECOMING STEADILY BETTER. CERTAIN OF HIS OTHER EVIDENCE RELATING TO THE UNION ACTIVITIES OF TWO OF THE AGGRIEVED HAS ALREADY BEEN OUTLINED IN THIS DECISION.

19. THE RESPONDENT COMPANY, ALTHOUGH REPRESENTED AT THE HEARING BY ABLE AND DISTINGUISHED COUNSEL AND ACCOMPANIED AT COUNSEL TABLE BY T. PASQUALE AND F. MATUCCI, OPTED NOT TO CALL ANY EVIDENCE.

20. IN LIGHT OF THE TOTALITY OF THE FOREGOING EVIDENCE ADDUCED FROM THE COMPLAINANT'S WITNESSES, THIS CASE FALLS SQUARELY WITHIN THE REASONING AS OUTLINED IN THE NATIONAL AUTOMATIC VENDING CO. LTD. CASE, C.L.L.C., VOL. 2, 1960-64, ARTICLE 161,278, P.1163-4:

"THE FACT THAT THE PRIMARY ONUS FOR ESTABLISHING THE MERITS OF THE COMPLAINT LIES ON THE COMPLAINANT, DOES NOT, OF COURSE, MEAN THAT THE COMPLAINANT IS BOUND TO DEMONSTRATE BY DIRECT EVIDENCE EACH AND EVERY FACT OR CONCLUSION OF FACT UPON WHICH THE ISSUE IN DISPUTE DEPENDS. REASONABLE AND NECESSARY INFERENCES MAY AND MUST BE DRAWN FROM ALL THE EVIDENCE ADDUCED AND THAT WHICH IS CLEARLY INFERABLE FROM THE EVIDENCE IS AS MUCH PROVED AS IF IT HAD BEEN ESTABLISHED BY DIRECT EVIDENCE. AS WAS POINTED OUT BY THE BOARD IN THE METROPOLITAN MEAT PACKERS LTD. CASE, CCH CANADIAN LABOUR LAW REPORTERS, VOL. 1, ¶16,230, THE ONUS OF PROOF RESTING ON THE COMPLAINANT IN A CLAIM UNDER SECTION 65 OF THE ACT IS NO GREATER THAN IN AN ORDINARY CIVIL ACTION, NAMELY THAT TO BE SUCCESSFUL A COMPLAINANT MUST PROVE, BY A PREPONDERANCE OF PROBABILITY THAT THE EMPLOYER, HAS, IN THE MANNER ALLEGED IN THE PROCEEDINGS, DISCRIMINATED AGAINST THE EMPLOYEE CONTRARY TO THE ACT. (SEE ALSO HANES V. WAWANESA MUTUAL INSURANCE COMPANY, (1963) 36 D.L.R. (2D) 718 (S.C.C.), WHERE THE SUPREME COURT OF CANADA RECENTLY SETTLED THE QUESTION THAT THE BURDEN OF PROOF IN CIVIL CASES INVOLVING QUASI-CRIMINAL OR CRIMINAL CONDUCT IS THE STANDARD IN CIVIL ACTION.)

IT IS NOT WITHOUT SOME INTEREST TO NOTE THE FOLLOWING STATEMENTS CONCERNING THE QUANTUM OF PROOF REQUIRED BY THE COURTS WHERE THE FACTS OF AN ISSUE TO BE PROVED LIE PECULIARLY WITHIN THE KNOWLEDGE OR MEANS OF KNOWLEDGE OF THE OPPOSITE PARTY:-

.....IN CONSIDERING THE AMOUNT OF EVIDENCE NECESSARY TO SHIFT THE BURDEN OF PROOF, THE COURT HAS REGARD TO THE OPPORTUNITIES OF KNOWLEDGE WITH RESPECT TO THE FACT TO BE PROVED, WHICH MAY BE POSSESSED BY THE PARTIES RESPECTIVELY CUMMINGS V. VANCOUVER (1911) 1 W.W.R. 31 PER IRVING, J. A., AT P. 34, QUOTING FROM STEPHEN'S DIGEST OF THE LAWS OF EVIDENCE, 9TH ED., ART. 96 (AFFD. 46 S.C.R. 457; SEE ALSO WINDSOR BOARD OF EDUCATION V. FORD MOTOR CO. OF CANADA LTD. [1939] S.C.R. 413, PER DAVIES J. DISSSENTING AT P.432, [1941] A.C. 453, PER LORD ATKIN AT P. 461; R V. KAKELO [1923], 2 K.B. AT P.795; PHIPSON ON EVIDENCE, 9TH ED., P.41.)

.....WHERE THE FACTS LIE PECULIARLY WITHIN THE KNOWLEDGE OF ONE OF THE PARTIES, VERY SLIGHT EVIDENCE MAY BE SUFFICIENT TO DISCHARGE THE BURDEN OR PROOF RESTING ON THE OPPOSITE PARTY - TAYLOR ON EVIDENCE, 12TH ED. VOL. 1, PP. 262-263; (SEE ALSO PLEET V. CANADIAN NORTHERN QUEBEC R. W. CO., (1921) 50 O.L.R. 223).

A RULE OF EVIDENCE WILL BE FOUND STATED IN THE TEXT BOOKS IN THE FOLLOWING WORDS: "WHERE THE SUBJECT MATTER OF THE ALLEGATION LIES PECULIARLY WITHIN THE KNOWLEDGE OF ONE OF THE PARTIES, THAT PARTY MUST PROVE IT, WHETHER IT BE OF AN AFFIRMATIVE OR A NEGATIVE CHARACTER, AND EVEN THOUGH THERE BE A PRESUMPTION OF LAW IN HIS FAVOUR - -. THIS RULE HAS BEEN MODIFIED BY LATER AUTHORITIES. IN PHIPSON ON EVIDENCE, P. 27, IT IS SAID THAT: IN THE ABSENCE OF STATUTORY PROVISIONS, THE BETTER OPINION NOW SEEMS TO BE THAT, IN GENERAL, SOME PRIMA FACIE EVIDENCE MUST BE GIVEN BY THE COMPLAINANT IN ORDER TO CAST A BURDEN UPON HIS ADVERSARY. THE DIFFICULTY OF PROVING A FACT PECULIARLY KNOWN TO AN OPPONENT MAY, IT HAS BEEN SAID, AFFECT THE QUANTUM OF EVIDENCE DEMANDED IN THE FIRST INSTANCE BUT DOES NOT CHANGE THE

THE RULE OF LAW¹. I THINK THIS RULE APPLICABLE TO THE PRESENT CASE AND THAT VERY SLIGHT EVIDENCE AS TO THE DEFENDANT DOING BUSINESS WAS SUFFICIENT TO SHIFT THE BURDEN TO THE DEFENDANT WACHNOW V. MYERS [1921] W.W.R. 17 (MAN. C. A.) PER FULLERTON, J. A., PP. 17 18.

IN ORDER TO SHIFT THE BURDEN OF JUSTIFICATION TO THE EMPLOYER IN AN ACTION BY A FORMER EMPLOYEE AGAINST AN EMPLOYER AT COMMON LAW FOR DAMAGES FOR WRONGFUL DISMISSAL, THE PLAINTIFF EMPLOYEE NEED PROVE ONLY (1) THE CONTRACT OF HIRING, (2) THE FACT OF HIS DISCHARGE AND (3) HIS DAMAGES. WHEN HE DOES THIS, AN ONUS THEN SHIFTS TO THE DEFENDANT EMPLOYER TO ESTABLISH THAT PROPER CAUSE EXISTED FOR THE DISMISSAL. (SEE GEORGE DITCHFIELD V. GIBSON MANUFACTURING COMPANY LTD. CCH CANADIAN LABOUR LAW REPORTER, VOL. 1 ¶15,362, MCINNES V. FERGUSON, (1899) 32 N.S.R. 516; BUTLER V. C.N.R. [1940] 1 D.L.R. 256.)

THE MAJORITY AT PARAGRAPH 19 OF THEIR DECISION QUOTE FURTHER FROM THE ABOVE STATED CASE. I AGREE WITH THE REASONING AS OUTLINED IN THAT QUOTE ADOPTED BY THE MAJORITY.

21. THE UNCONTRADICTED EVIDENCE IN THE INSTANT CASE CLEARLY ESTABLISHES THAT GIOVANNI BARTOLOMEO WAS DISCHARGED NOT FOR THE REASONS GIVEN BY THE EMPLOYER IN HIS LETTER OF DISMISSAL WHEREIN THEY STATE:

"DUE TO THE DRASTIC CHANGES THAT HAVE TAKEN PLACE IN THE FOOD INDUSTRY IN THE PAST MONTHS COUPLED WITH THE ECONOMIC CONDITIONS, IT IS REGRETFULLY NECESSARY TO TERMINATE YOUR EMPLOYMENT WITH US EFFECTIVE TODAY, FEBRUARY 12, 1971."

22. BARTOLOMEO'S EVIDENCE WAS THAT THEY TOLD HIM HE WAS BEING FIRED BECAUSE OF A DISPUTED GASOLINE BILL. WE MIGHT WELL ASK WHAT WAS THE REAL REASON FOR HIS DISMISSAL. WE DO NOT HAVE DIRECT EVIDENCE ON THIS MATTER BECAUSE THE ONLY PERSON WHO KNOWS THAT, IS THE PASQUALES AND THEY DECIDED NOT TO GIVE THE BOARD THAT REASON.

23. I CANNOT ACCEPT THE REASONING OF THE MAJORITY TO THE EFFECT THAT THE EVIDENCE OF VINCENT GENTILE, UNION ORGANIZER, ABOUT GENERAL ECONOMIC CONDITIONS IN THE INDUSTRY "SUPPORTS THE REASONS GIVEN BY THE COMPANY IN THE TERMINATION LETTER FILED BY THE COMPLAINANT."

24. EVEN IF WE WERE TO ACCEPT THIS LETTER, WHY WOULD SUCH A SENIOR EMPLOYEE AS BARTOLOMEO BE DISMISSED RATHER THAN LESS SENIOR EMPLOYEES?

25. MARCO DOMINIONI WAS ALLEGEDLY DISMISSED FOR CHEATING THE COMPANY OF \$6.00. WE HAVE UNDISPUTED EVIDENCE THAT HE DID NOT STEAL THAT \$6.00. THE EVIDENCE IS CLEAR THAT THE DISPUTED MOTEL BILL WAS DOCTORED TO READ \$18.60 INSTEAD OF \$12.60 BY SOMEONE WITHIN THE COMPANY OFFICE AFTER DOMINIONI HAD HANDED IN THE BILL.

26. IT IS STRANGE INDEED THAT ALL OF A SUDDEN AT A TIME WHEN THE AGGRIEVED EMPLOYEES WERE WORKING AN AVERAGE OF 55-60 HOURS PER WEEK THAT ECONOMIC CONDITIONS MADE IT NECESSARY TO TERMINATE SELECTED EMPLOYEES' EMPLOYMENT; STRANGER STILL WAS THE SUDDEN DISCOVERY OF TWO ALLEGED THIEFS AMONG THE FOUR EMPLOYEES SELECTED.

27. WHY WAS AGGRIEVED EMPLOYEE, VITTORE LEPONE, WITH 5 MONTHS SENIORITY, JUST "TOLD TO GO HOME FOR A PERIOD OF TIME BECAUSE OF SCARCITY OF WORK" WHILE ALBERTO FERRANTONE WITH 5 1/2 YEARS SENIORITY WAS SIMPLY DISMISSED OUTRIGHT?

28. THE EVIDENCE OF THE AGGRIEVED EMPLOYEES WAS GIVEN TO THE BOARD VIA AN INTERPRETER. THEY OBVIOUSLY HAVE NOT AS YET GRASPED THE ENGLISH LANGUAGE SUFFICIENTLY TO SPEAK DIRECTLY TO OUR TRIBUNAL. I WOULD TRUST, HOWEVER, THAT THEY HAVE SUFFICIENTLY GRASPED AN UNDERSTANDING AND APPRECIATION OF OUR SOCIETY'S FUNDAMENTAL RULE OF LAW BASED ON JUSTICE AND FAIR PLAY AND THAT THE FREEDOMS WITH REGARD TO UNION ACTIVITY SPELLED OUT IN THE LABOUR RELATIONS ACT ARE REAL AND WORKABLE IN OUR DEVELOPING SOCIETY. THEIR RESOURCE AND THAT OF ALL LAW ABIDING CITIZENS TO JUSTICE ARE THROUGH OUR COURTS AND TRIBUNALS AND NOT AT THE BARRICADES.

29. THE LABOUR RELATIONS ACT EMBODIES PROVISIONS TO PROTECT THE RIGHTS OF WORKERS TO JOIN THE UNION OF THEIR CHOICE AND TO PARTICIPATE IN ITS LAWFUL ACTIVITIES BY WAY OF BARGAINING TO FURTHER THE WORKER'S INTEREST AND IMPROVE HIS CONDITION. ONE OF THE BOARD'S PRIME DUTIES UNDER THE LEGISLATION IS TO BE EVER VIGILANT TO SEE THAT THESE RIGHTS ARE PRESERVED AND NOT JUST MADE ILLUSORY.

30. HAVING CAREFULLY REVIEWED ALL OF THE EVIDENCE ADDUCED BY THE COMPLAINANT IN THIS MATTER, I FIND THAT AN ONUS OF CREDIBLE EXPLANATION IS CAST UPON THE RESPONDENT.

31. IN LIGHT OF THE FOREGOING I FIND THAT ON THE BALANCE OF PROBABILITIES AND THE EVIDENCE OF PREVIOUS ANTI-UNION ACTIVITIES BY THE RESPONDENT THAT THE AGGRIEVED EMPLOYEES HAD THEIR EMPLOYMENT TERMINATED BY THE RESPONDENT COMPANY CONTRARY TO THE PROVISIONS

OF THE LABOUR RELATIONS ACT.

32. I WOULD HAVE ORDERED THEIR REINSTATEMENT WITH UNINTERRUPTED CREDIT FOR SERVICE IN THE SAME OR LIKE POSITION THEY HELD AT THE DATE OF THEIR TERMINATION.

18827-70-M: THE WINDSOR UTILITIES COMMISSION (APPLICANT) V. LOCAL UNION No. 911 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, A.F. OF L. - C.I.O. (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND E. BOYER.

APPEARANCES AT THE HEARING: LEON Z. MCPHERSON, Q.C., M. E. REED AND J. E. EVANS FOR THE APPLICANT, WILLIAM J. MOORE, GEORGE PETTA AND PERCY SCHLOTZHAUER FOR THE RESPONDENT.

DECISION OF J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBER J. D. BELL:
MAY 25, 1971.

1. THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT J. D. BELL REPLACE THE LATE R. W. TEAGLE AS THE EMPLOYER REPRESENTATIVE IN THIS MATTER.

2. THIS IS AN APPLICATION UNDER SECTION 79(2) OF THE LABOUR RELATIONS ACT WHEREIN THE BOARD HAS BEEN ASKED TO DETERMINE WHETHER CERTAIN PERSONS CLASSIFIED BY THE APPLICANT AS LINE FOREMEN AND A PERSON CLASSIFIED AS A CHIEF OPERATOR ARE EMPLOYEES OF THE APPLICANT FOR THE PURPOSES OF THE ACT.

3. THE EVIDENCE CLEARLY ESTABLISHED THAT EACH OF THE DISPUTED PERSONS WAS A NON-WORKING FOREMAN. THE MAJORITY OF THEIR TIME IS SPENT SUPERVISING OTHER EMPLOYEES AND, EXCEPT IN ISOLATED CASES OF EMERGENCY, THEY DO NOT PERFORM ANY OF THE PHYSICAL WORK PERFORMED BY THE EMPLOYEES THEY SUPERVISE. WHILE THEY HAVE POWER TO MAKE RECOMMENDATIONS CONCERNING THE WORK AND ATTEND REGULAR FOREMEN'S MEETINGS, THEY HAVE NO REAL DISCRETIONARY AUTHORITY EXCEPT IN STRICTLY CIRCUMSCRIBED AREAS.

4. THE UNION ARGUED VERY FORCIBLY THAT THE DISPUTED PERSONS WERE EMPLOYEES FOR THE PURPOSES OF THE ACT AND SUGGESTED THAT THE PERSONS IN DISPUTE WERE MERE CONDUITS FOR MANAGEMENT'S INSTRUCTIONS AND DIRECTIONS.

5. WHERE PERSONS ARE ALLEGED TO BE MEMBERS OF MANAGEMENT AND HOLD POSITIONS WHICH ARE CLAIMED TO BE ON THE FIRST LEVEL OF MANAGE-

MENT, IT IS OFTEN VERY DIFFICULT TO ASCERTAIN ON WHICH SIDE OF THE MANAGERIAL LINE THEIR FUNCTIONS FALL. WHEN THE DISPUTED PERSONS HAVE NO REAL DISCRETIONARY AUTHORITY OR POWER TO MAKE MEANINGFUL INDEPENDENT DECISIONS AND ARE ALLEGED TO EXERCISE SUPERVISORY POWERS, THE BOARD MUST DETERMINE THE NATURE OF THE SUPERVISORY POWERS AND THE EXTENT TO WHICH SUCH SUPERVISORY POWERS ARE ACTUALLY EXERCISED. IT IS NOT SUFFICIENT TO CLAIM THAT SUCH POWERS ARE CONTAINED IN THEIR JOB DESCRIPTION. MANAGERIAL FUNCTIONS MUST BE ACTUALLY EXERCISED. IT IS RECOGNIZED, OF COURSE, THAT IF THE POSITION IS A NEWLY CREATED ONE OR IF THE INCUMBENT OF THE POSITION HAS BEEN RECENTLY APPOINTED, IT MAY BE THAT THE OCCASIONS HAVE YET TO ARISE WHEN CERTAIN POWERS CAN BE EXERCISED. IF SUCH IS THE CASE, IT MAY BE THAT A REQUEST THAT THE BOARD DETERMINE WHETHER THEIR FUNCTIONS ARE MANAGERIAL IS PREMATURE. IN THE INSTANT CASE, HOWEVER, THE PERSONS IN DISPUTE HAVE OCCUPIED THEIR POSITIONS FOR MANY YEARS AND HAD A GREAT DEAL OF EXPERIENCE IN THEIR POSITIONS.

6. IN LARGE COMPANIES, THE RESPONSIBILITIES OF MANAGEMENT ARE SHARED BY A GREAT NUMBER OF PERSONS. THE FUNCTIONS OF HIRING AND FIRING MAY BE RESTRICTED TO THE HEAD OF THE PERSONNEL DEPARTMENT WHO ACTS ON THE REPORTS AND RECOMMENDATIONS OF OTHERS. IN VIEW OF THE FACT THAT THE FUNCTIONS OF MANAGEMENT ARE SHARED, NOT ALL MANAGERIAL FUNCTIONS ARE EXERCISED BY ANY ONE PERSON. A PERSON MAY BE SOLELY ENGAGED IN THE EXERCISE OF ONE OR TWO MANAGERIAL FUNCTIONS. SO LONG AS THE FUNCTIONS EXERCISED ARE TRULY OF A MANAGERIAL NATURE, IT MUST BE HELD THAT THE PERSON EXERCISING SUCH FUNCTIONS IS NOT ENGAGED IN THE PERFORMANCE OF BARGAINING UNIT WORK.

7. WHERE A PERSON IS REQUIRED TO EXERCISE FUNCTIONS WHICH ARE OF A MANAGERIAL NATURE AND IS ALSO REQUIRED TO PERFORM THE TYPE OF WORK WHICH IS PERFORMED BY THE BARGAINING UNIT EMPLOYEES, THE BOARD MUST DETERMINE WHETHER THE WORK IS MERELY INCIDENTAL TO HIS MANAGERIAL FUNCTIONS OR WHETHER THE FUNCTIONS WHICH ARE OF A MANAGERIAL NATURE ARE MERELY INCIDENTAL TO HIS BARGAINING UNIT WORK. IN ORDER TO MAKE THIS DETERMINATION, THE BOARD MUST ASCERTAIN THE NATURE OF AND THE EXTENT TO WHICH SUCH FUNCTIONS ARE EXERCISED. IF THE NATURE OF THE FUNCTIONS ARE SUCH THAT THEY REQUIRE A PERSON TO MAKE INDEPENDENT DECISIONS IN MEANINGFUL MATTERS WHICH ARE OF REAL CONSEQUENCE TO THE COMPANY'S OPERATIONS RATHER THAN MERELY THE APPLICATION OF EXPERTISE IN TECHNICAL MATTERS, OR IF THE PERSON EXERCISES HIS UNFETTERED DISCRETION CONCERNING MATTERS OF SUBSTANCE IN THE EMPLOYMENT RELATIONSHIP OF OTHER PERSONS, THE NATURE OF SUCH FUNCTIONS PLACES HIM ON THE MANAGEMENT SIDE OF THE EMPLOYEE-MANAGEMENT LINE, NO MATTER HOW MUCH BARGAINING UNIT WORK THE PERSON OTHERWISE PERFORMS. IT IS NOT UNCOMMON IN SMALL BUSINESSES FOR THE OWNER OR A FOREMAN TO PERFORM WORK ALONGSIDE THE EMPLOYEES AND AT THE SAME TIME ADMINISTER ALL PHASES OF THE MANAGEMENT END OF THE BUSINESS. THIS IS LESS LIKELY TO HAPPEN IN LARGER COMPANIES.

8. IN LARGER COMPANIES, HOWEVER, PERSONS ARE OFTEN DELEGATED LIMITED MANAGERIAL FUNCTIONS WITH NO REAL INDEPENDENT AUTHORITY OR DISCRETION. IN SUCH CASES, IT IS NECESSARY TO DETERMINE THE EXTENT TO WHICH SUCH FUNCTIONS ARE EXERCISED. IF A PERSON IS ENGAGED IN THESE FUNCTIONS, WHICH ARE LIMITED IN THEIR NATURE, FOR THE MAJORITY OF TIME, ANY OTHER WORK PERFORMED MAY BE PROPERLY DESCRIBED AS MERELY INCIDENTAL TO THE MANAGERIAL FUNCTIONS EXERCISED. IF, HOWEVER, A PERSON IS REQUIRED TO PERFORM BARGAINING UNIT WORK FOR THE MAJORITY OF THE TIME AND IS ALSO REQUIRED TO EXERCISE MANAGERIAL TYPE FUNCTIONS WHICH ARE OF A RESTRICTED NATURE, THE FUNCTIONS WHICH ARE OF A MANAGERIAL TYPE MAY BE SAID TO BE MERELY INCIDENTAL TO THE BARGAINING UNIT WORK. IF THE MANAGERIAL TYPE FUNCTIONS ARE MERELY INCIDENTAL TO THE BARGAINING UNIT WORK PERFORMED, THE PERSON MUST BE FOUND TO BE AN EMPLOYEE FOR THE PURPOSES OF THE ACT.

9. IN THE INSTANT CASE, THE DISPUTED PERSONS ARE ENGAGED, ALMOST EXCLUSIVELY, IN THE PERFORMANCE OF SUPERVISORY FUNCTIONS. EVEN THOUGH SUCH SUPERVISORY FUNCTIONS ARE ENFORCED THROUGH RECOMMENDATIONS RATHER THAN INDEPENDENT ACTION AND THERE IS NO REAL DISCRETION IN DISCIPLINARY MATTERS, THE FACT THAT ALMOST 100 PER CENT OF THE NON-WORKING FOREMEN'S TIME IS SPENT IN THE PERFORMANCE OF SUCH SUPERVISORY FUNCTIONS AND VIRTUALLY NO PHYSICAL WORK IS PERFORMED, IT MUST BE FOUND THAT THEIR FUNCTIONS, WHEN VIEWED AS A WHOLE, ARE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT. WHILE THE RATE PAYERS MAY QUESTION THE NECESSITY OF THE EXTENT OF SUPERVISION GIVEN THE LINE MEN WHO ARE SUPERVISED BY THE LINE FOREMEN, IT IS NOT FOR THIS BOARD TO DETERMINE WHETHER SUCH SUPERVISION IS REALLY REQUIRED. THIS BOARD CAN ONLY DETERMINE WHETHER SUPERVISION IS EXERCISED AND NEED NOT DETERMINE WHETHER IT IS JUSTIFIED.

10. FOR THE FOREGOING REASONS AND FOR THE REASONS SET OUT IN THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO CASE O.L.R.B. MONTHLY REPORT, AUGUST 1969, P. 669, WE ACCORDINGLY FIND THAT W. AREND, H. ARMOUR, P. BOCCHINI, S. CHAMKO, F. DAGELMAN, W. HARRISON, I. NEWBOLD, G. PAGE, L. RENAUD, J. SCARPELLI, A. WALL, S. WOJCIK AND R. TOBIN EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND ARE THEREFORE NOT EMPLOYEES OF THE APPLICANT FOR THE PURPOSES OF THE ACT.

DECISION OF BOARD MEMBER E. BOYER: MAY 25, 1971.

I DISSENT. I FIND NOTHING IN THE FUNCTIONS PERFORMED BY THE DISPUTED PERSONS WHICH CAN BE CHARACTERIZED AS MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND I ACCORDINGLY FIND THAT THEY ARE EMPLOYEES OF THE APPLICANT FOR THE PURPOSES OF THE ACT.

18862-70-R: TEAMSTERS' LOCAL UNION No. 230, READY MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS (APPLICANT) V. BLAW-KNOX OF CANADA LIMITED (RESPONDENT).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: I. J. THOMSON AND D. MCDOWELL APPEARING FOR THE APPLICANT; AND ROBERT McCOMB APPEARING FOR THE RESPONDENT.

DECISION OF R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBER F. W. MURRAY:
MAY 26, 1971.

1. THE BOARD NOTES THE AGREEMENT OF THE PARTIES TO THE SUBSTITUTION OF MR. F. W. MURRAY IN THE PLACE AND STEAD OF THE LATE MR. R. W. TEAGLE.

. . .

4. THE APPLICANT IS SEEKING CERTIFICATION ON BEHALF OF A GROUP OF FIVE EMPLOYEES EMPLOYED BY THE RESPONDENT AT ITS WAREHOUSEMEN FACILITIES AT COPPER CLIFF. THE RESPONDENT TAKES THE POSITION THAT THE BARGAINING UNIT WHICH THE APPLICANT IS SEEKING IS NOT APPROPRIATE FOR COLLECTIVE BARGAINING AND HAS SUGGESTED THAT, HAVING REGARD TO THE NATURE OF ITS OPERATIONS AT COPPER CLIFF, THE APPROPRIATE UNIT FOR COLLECTIVE BARGAINING CONSISTS OF ALL OF ITS OFFICE AND CLERICAL EMPLOYEES AT COPPER CLIFF WITH CERTAIN EXCLUSIONS NOT HERE RELEVANT.

5. THE BOARD HAS CAREFULLY CONSIDERED THE CONTENTS OF THE REPORT OF THE EXAMINER AND THE REPRESENTATIONS OF THE PARTIES THEREON. THE RESPONDENT IS THE PROJECT MANAGER FOR THE CONSTRUCTION OF THE INCO NICKEL REFINERY AT COPPER CLIFF AND HAS GENERAL SUPERVISORY RESPONSIBILITIES IN CONNECTION THEREWITH. THE OPERATIONS OF THE RESPONDENT AT COPPER CLIFF CONSIST OF THREE DEPARTMENTS UNDER THE GENERAL SUPERVISION OF A PROJECT MANAGER. THE THREE DEPARTMENTS ARE: CONSTRUCTION SUPERVISION, FIELD ENGINEERING AND ADMINISTRATIVE.

6. THE EMPLOYEES FOR WHOM THE APPLICANT IS SEEKING CERTIFICATION ARE EMPLOYED IN THE ADMINISTRATIVE DEPARTMENT, WHICH IS UNDER THE GENERAL MANAGEMENT OF AN OFFICE MANAGER, WHO IS RESPONSIBLE FOR ACCOUNTS PAYABLE, PAYROLL, PURCHASING OF ALL MATERIAL REQUISITIONED IN THE FIELD, COST CONTROL AND RECEIVING OF INCOMING MATERIAL. THE OFFICE MANAGER GENERALLY SUPERVISES THE EMPLOYEES FOR WHOM THE APPLICANT IS SEEKING CERTIFICATION.

7. ON THE BASIS OF ALL THE EVIDENCE BEFORE US, WE ARE OF THE OPINION THAT THE EMPLOYEES FOR WHOM THE APPLICANT IS SEEKING CERTI-

FICATION PERFORM ESSENTIALLY CLERICAL FUNCTIONS AND HAVE A COMMUNITY OF INTEREST WITH AT LEAST TEN OTHER OFFICE AND CLERICAL EMPLOYEES EMPLOYED BY THE RESPONDENT IN ITS ADMINISTRATIVE DEPARTMENT. THE EMPLOYEES FOR WHOM THE APPLICANT IS SEEKING CERTIFICATION PERFORM THEIR DUTIES IN THE RESPONDENT'S OFFICE AND IN ITS WAREHOUSE FACILITIES. IN ESSENCE, THE WAREHOUSE FACILITIES STORE ONLY A SMALL PERCENTAGE OF THE MATERIALS WHICH ARE RECEIVED AT THE CONSTRUCTION SITE. THE BULK OF SUCH MATERIALS ARE, IN REALITY, DIRECTED AND DISTRIBUTED OVER THE CONSTRUCTION SITE BEFORE THEY ENTER THE WAREHOUSE FACILITIES WITH THE EMPLOYEES FOR WHOM THE APPLICANT IS SEEKING CERTIFICATION FORMING A LINK IN THE RECEIPT AND USUALLY SIMULTANEOUS DISTRIBUTION OF THE INCOMING MATERIALS. THE WORK PERFORMED BY THESE EMPLOYEES IN THE WAREHOUSE FACILITIES IS CLEARLY AN EXTENSION OF AND IS HIGHLY INTEGRATED WITH THE WORK PERFORMED IN THE OFFICE OF THE RESPONDENT AT COPPER CLIFF.

8. HAVING REGARD TO THE FOREGOING, WE ARE SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE US THAT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN ANY BARGAINING UNIT THAT WE MIGHT FIND APPROPRIATE FOR COLLECTIVE BARGAINING, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JANUARY 18, 1971, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

9. IN THE RESULT, THEREFORE, THE APPLICATION IS DISMISSED.

DECISION OF BOARD MEMBER E. BOYER: MAY 26, 1971.

I DISSENT. BASED ON THE REPRESENTATIONS OF THE PARTIES AND THE REPORT OF THE EXAMINER, I WOULD HAVE FOUND THE EMPLOYEES TO BE WAREHOUSEMEN IN AN APPROPRIATE BARGAINING UNIT AND BASED ON THE EVIDENCE OF MEMBERSHIP WOULD HAVE GRANTED CERTIFICATION TO THE APPLICANT.

11-70-R: AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) v. BEEF TERMINAL LIMITED (RESPONDENT).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS J.D. BELL AND P.J. O'KEEFE.

APPEARANCES AT THE HEARING: MARTIN L. LEVINSON, V. GENTILE AND ROBERT DAVIEAU FOR THE APPLICANT; F.R. VON VEH AND W.F. MCCARTNEY FOR THE RESPONDENT.

DECISION OF THE BOARD: MAY 25, 1971.

1. THIS IS AN APPLICATION UNDER SECTION 47(1) OF THE LABOUR RELATIONS ACT FOR A DECLARATION THAT THE APPLICANT HAS ACQUIRED THE RIGHTS, PRIVILEGES AND DUTIES UNDER THIS ACT OF THE BUTCHER WORKERS' EMPLOYEE ASSOCIATION (HEREINAFTER REFERRED TO AS THE ASSOCIATION).
2. IT IS NECESSARY TO FIRST ASCERTAIN WHETHER THE ASSOCIATION HAS TAKEN THE PROPER STEPS IN ACCORDANCE WITH ITS CONSTITUTION IN ORDER TO EFFECT A MERGER, AMALGAMATION OR TRANSFER OF JURISDICTION.
3. THE RESPONDENT SUBMITS THAT THE ASSOCIATION DID NOT COMPLY WITH ITS CONSTITUTION PARTICULARLY ARTICLE 10 AND ARTICLE 12. THOSE ARTICLES PROVIDE AS FOLLOWS:

ARTICLE TEN - BY-LAWS

10.01 THE EXECUTIVE MAY MAKE BY-LAWS FOR THE CONDUCT OF ITS BUSINESS, OR FOR THE CONDUCT OF THE BUSINESS OF THE ASSOCIATION COVERING ANY MATTERS NOT SPECIFICALLY PROVIDED FOR IN THE CONSTITUTION, BUT EACH BY-LAW MUST BE APPROVED BY A MAJORITY OF ALL MEMBERS OF THE ASSOCIATION BEFORE IT SHALL BE VALID.

ARTICLE TWELVE - DUES

12.01 THERE SHALL BE AN INITIATION FEE OF \$1.00. THE MEMBERSHIP DUES SHALL BE \$1.00 PER MONTH, OR SUCH OTHER AMOUNT AS THE EXECUTIVE MAY FROM TIME TO TIME DECIDE ACCORDINGLY TO THE REQUIREMENTS OF THE ASSOCIATION. THE FIRST MEMBERSHIP DUES SHALL BE PAID BY EACH MEMBER IN THE CALENDAR MONTH IMMEDIATELY FOLLOWING HIS BECOMING A MEMBER OF THE ASSOCIATION. ANY PERSON IN ARREARS FOR TWO MONTHS SHALL CEASE TO BE A MEMBER OF THE ASSOCIATION UNLESS, DUE TO SPECIAL CIRCUMSTANCES, THE EXECUTIVE GRANTS AN EXTENSION OF TIME FOR PAYMENT OF SUCH DUES.

4. THE ASSOCIATION SOUGHT TO EFFECT THE MERGER, AMALGAMATION OR TRANSFER OF JURISDICTION BY AMENDING ITS CONSTITUTION AND PROCEEDING PURSUANT TO THAT AMENDMENT. SEE AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC V. BEEF TERMINAL LIMITED V. BUTCHER WORKERS EMPLOYEES ASSOCIATION, APRIL 1970 OLRB MTHLY. REP. 75.

5. THE RESPONDENT SUBMITS THAT THE ASSOCIATION DID NOT COMPLY

WITH ARTICLE 10 OF ITS CONSTITUTION. ARTICLE 10 SPECIFICALLY DEALS WITH THE MAKING OF BY-LAWS AND ACCORDINGLY IT IS NOT APPLICABLE TO THIS SITUATION BECAUSE THE ASSOCIATION DID NOT PROCEED BY WAY OF A BY-LAW BUT ENACTED A CONSTITUTIONAL AMENDMENT IN ORDER TO EFFECT ITS PURPOSE AND THEN PROCEEDED PURSUANT TO THAT CONSTITUTIONAL AMENDMENT.

6. OF GREATER CONCERN IS WHETHER THE ASSOCIATION COMPLIED WITH ARTICLE 14.01 WHICH PROVIDES AS FOLLOWS:

ARTICLE FOURTEEN - AMENDMENTS

14.01 THIS CONSTITUTION MAY BE AMENDED ONLY ON THE APPROVAL OF A MAJORITY OF THE MEMBERS OF THE EXECUTIVE SUPPORTED BY A MAJORITY VOTE OF ALL THE MEMBERS OF THE ASSOCIATION PRESENT AND VOTING AT A MEETING DULY CALLED FOR THAT PURPOSE.

THE RESPONDENT SUBMITTED THAT IN ORDER TO AMEND THE CONSTITUTION THAT "ALL THE MEMBERS OF THE ASSOCIATION" MUST BE PRESENT AND VOTING AT A MEETING. WHILE WE ARE IN AGREEMENT THAT ARTICLE 14.01 IS SOMEWHAT INARTICULATELY WORDED, WE ARE OF THE OPINION THAT A PROPER READING OF ARTICLE 14.01 DOES NOT REQUIRE THE PRESENCE OF ALL THE MEMBERS OF THE ASSOCIATION. IF THE CONSTITUTION REQUIRED "ALL THE MEMBERS" THEN THE WORDS "PRESENT AND VOTING AT A MEETING DULY CALLED FOR THAT PURPOSE" WOULD BE REDUNDANT. ARTICLE 14.01 CAN BE COMPARED WITH ARTICLE 10 WHICH REQUIRES BY-LAWS TO BE APPROVED BY A MAJORITY "OF ALL MEMBERS OF THE ASSOCIATION BEFORE IT SHALL BE VALID". WE ARE OF THE OPINION IN THE CONTEXT OF ARTICLE 14.01 THAT THE WORDS "ALL THE MEMBERS OF THE ASSOCIATION" ARE QUALIFIED BY THE WORDS "PRESENT AND VOTING AT A MEETING", SO THAT IT IS NOT REQUIRED THAT EACH AND EVERY MEMBER BE PRESENT. WE THEREFORE FIND THAT THE ASSOCIATION HAS TAKEN THE APPROPRIATE STEPS IN ORDER TO EFFECT THE MERGER, AMALGAMATION OR TRANSFER OF JURISDICTION.

7. THE RESPONDENT FURTHER SUBMITTED THAT A LETTER BY THE APPLICANT UNION TO THE ASSOCIATION AGREEING TO THE MERGER, AMALGAMATION OR TRANSFER OF JURISDICTION WAS INADMISSIBLE BECAUSE IT WAS HEARSAY. IT HAS BEEN THE PRACTICE OF THIS BOARD TO ACCEPT AS EVIDENCE OF A MERGER, AMALGAMATION OR TRANSFER OF JURISDICTION, A LETTER FROM THE ACCEPTING UNION AGREEING TO EITHER THE MERGER, AMALGAMATION OR TRANSFER OF JURISDICTION. THE APPLICANT HAS COMPLIED WITH THIS PRACTICE AND THE ISSUE IS WHETHER IT IS APPROPRIATE FOR THE BOARD TO ACCEPT THE LETTER AS IT HAS PREVIOUSLY DONE.

8. IN T. A. MILLER, LTD. V. MINISTER OF HOUSING ET AL, (1968)
2 A11 E.R. 633 AN INQUIRY WAS HELD BY AN INSPECTOR WHO ADMITTED IN

EVIDENCE A LETTER. LORD DENNING, M.R., STATED THE FOLLOWING:

"THE INSPECTOR RELIED ON MR. FOGWILL'S LETTER. SO DID THE MINISTER IN HIS DECISION. COUNSEL FOR THE APPELLANTS SAID THAT THEY OUGHT NOT TO HAVE RELIED ON IT AT ALL. IT OUGHT NOT EVEN TO HAVE BEEN ADMITTED BECAUSE IT WAS HEARSAY. IT WAS NOT ON OATH, NO OPPORTUNITY WAS GIVEN TO TEST IT BY CROSS-EXAMINATION, AND IT WAS OBJECTED TO. COUNSEL SAID THAT IN THESE CIRCUMSTANCES IT WAS CONTRARY TO NATURAL JUSTICE FOR IT TO BE ADMITTED.

IN MY OPINION THIS POINT IS NOT WELL FOUNDED. A TRIBUNAL OF THIS KIND IS MASTER OF ITS OWN PROCEDURE, PROVIDED THAT THE RULES OF NATURAL JUSTICE ARE APPLIED. MOST OF THE EVIDENCE HERE WAS ON OATH, BUT THAT IS NO REASON WHY HEARSAY SHOULD NOT BE ADMITTED WHERE IT CAN FAIRLY BY REGARDED AS RELIABLE. TRIBUNALS ARE ENTITLED TO ACT ON ANY MATERIAL WHICH IS LOGICALLY PROBATIVE, EVEN THOUGH IT IS NOT EVIDENCE IN A COURT OF LAW (SEE R. V. DEPUTY INDUSTRIAL INJURIES COMR., EX PARTE MOORE (1)). DURING THIS VERY WEEK IN PARLIAMENT WE HAVE HAD THE SECOND READING OF THE CIVIL EVIDENCE BILL. THE BILL WILL ABOLISH THE RULE AGAINST HEARSAY, EVEN IN THE ORDINARY COURTS OF THE LAND. IT ALLOWS FIRST-HAND HEARSAY TO BE ADMITTED IN CIVIL PROCEEDINGS, SUBJECT TO SAFEGUARDS. HEARSAY IS CLEARLY ADMISSIBLE BEFORE A TRIBUNAL. NO DOUBT IN ADMITTING IT, THE TRIBUNAL MUST OBSERVE THE RULES OF NATURAL JUSTICE, BUT THIS DOES NOT MEAN THAT IT MUST BE TESTED BY CROSS-EXAMINATION. IT ONLY MEANS THAT THE TRIBUNAL MUST GIVE THE OTHER SIDE A FAIR OPPORTUNITY OF COMMENTING ON IT AND OF CONTRADICTING IT (SEE BOARD OF EDUCATION V. RICE (2) AND R. V. DEPUTY INDUSTRIAL INJURIES COMR., EX PARTE MOORE (1)). THE INSPECTOR HERE DID THAT. MR. FOGWILL'S LETTER OF NOV. 19, 1964, WAS PUT TO THE WITNESSES AND THEY CONTRADICTED IT. NO APPLICATION WAS MADE FOR AN ADJOURN-

MENT TO DEAL FURTHER WITH IT. IN THESE CIRCUMSTANCES I DO NOT SEE THAT THERE WAS ANYTHING CONTRARY TO NATURAL JUSTICE IN ADMITTING IT."

9. NO APPLICATION WAS MADE FOR AN ADJOURNMENT TO DEAL FURTHER WITH THE MATTER. HAVING REGARD THEREFORE TO THE PRACTICE OF THE BOARD IN CASES OF THIS TYPE AND CONSIDERING THAT THERE IS OTHER EVIDENCE WHICH IS PROPERLY BEFORE US, WE ACCEPT THE LETTER IN THE PARTICULAR CIRCUMSTANCES OF THIS CASE AS BEING CONFIRMATORY OF THE FACT THAT THERE HAS BEEN A MERGER, AMALGAMATION OR TRANSFER OR JURISDICTION.

10. ALTERNATIVELY, WE ARE OF THE OPINION THAT EVIDENCE OF THIS TYPE IS ADMISSIBLE BEFORE THIS TRIBUNAL BOTH AT COMMON LAW SEE WILSON V. ESQUIMAULT AND NANAIMO RY. CO. (1922) 61 D.L.R. 1 (P.C.); NORTHWESTERN UTILITIES LTD. V. EDMONTON (1929) 2 D.L.R. 4 (SCC) AND PURSUANT TO SECTION 77(2)(c) OF THE LABOUR RELATIONS ACT WHICH PROVIDES AS FOLLOWS:

77.-(2) WITHOUT LIMITING THE GENERALITY OF SUBSECTION 1, THE BOARD HAS POWER,

...

(c) TO ACCEPT SUCH ORAL OR WRITTEN EVIDENCE AS IT IN ITS DISCRETION DEEMS PROPER, WHETHER ADMISSIBLE IN A COURT OF LAW OR NOT.

WE RECOGNIZE THAT THE ONTARIO COURT OF APPEAL IN R. V. BARBER EX PARTE WAREHOUSEMEN & MISC. DRIVERS' UNION (1968) 2 OR 245 (CA) IN DEALING WITH A SIMILAR PROVISION OF THE LABOUR RELATIONS ACT CONCERNING THE POWERS OF A BOARD OF ARBITRATION, HAS INDICATED THAT AT LEAST BOARDS OF ARBITRATION MAY BE REQUIRED TO BE CIRCUMSPECT IN DEALING WITH EVIDENCE. WE ARE OF THE OPINION THAT THE BARBER CASE WAS DECIDED ON A COMPLETELY DIFFERENT SET OF FACTS DEALING WITH THE QUESTION OF ADMITTING EXTRINSIC EVIDENCE OF PAST PRACTICE IN THE FACE OF A COLLECTIVE AGREEMENT WHICH WAS NOT AMBIGUOUS, AND ACCORDINGLY IS NOT APPLICABLE TO THE FACTS OF THIS CASE.

11. WHILE WE RECOGNIZE THAT THERE IS A BROAD LATITUDE IN THE BOARD'S POWER TO ADMIT AND ACT UPON EVIDENCE WHICH MIGHT BE INADMISSIBLE IN A COURT OF LAW, WE ARE OF THE OPINION THAT EACH SITUATION MUST BE DEALT WITH ON ITS OWN PARTICULAR FACTS.

12. HAVING REGARD TO THE EVIDENCE AND FOR THE REASONS GIVEN WE ARE OF THE OPINION THAT THE APPLICANT HAS ACQUIRED THE RIGHTS, PRIVILEGES AND DUTIES OF THE ASSOCIATION UNDER THE LABOUR RELATIONS ACT.

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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING MAY 1971

BARGAINING AGENTS CERTIFIED DURING MAY

NO VOTE CONDUCTED

6-70-R: NURSES' ASSOCIATION ST. VINCENT HOSPITAL (APPLICANT) V. ST. VINCENT HOSPITAL (OTTAWA) (RESPONDENT).

UNIT: "ALL LAY REGISTERED AND GRADUATE NURSES EMPLOYED BY THE RESPONDENT AT OTTAWA ENGAGED IN NURSING CARE AND TEACHING, SAVE AND EXCEPT NURSING SUPERVISOR AND PERSONS ABOVE THE RANK OF NURSING SUPERVISOR." (65 EMPLOYEES IN THE UNIT).

9-70-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. SWIFT CANADIAN CO., LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT TIMMINS, SAVE AND EXCEPT MANAGER, PERSONS ABOVE THE RANK OF MANAGER, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (4 EMPLOYEES IN THE UNIT).

200-70-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (APPLICANT) V. METALLIZING COMPANY OF TORONTO LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT ENGAGED IN BUILDING PROJECTS IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

211-71-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES LOCAL 647 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. WESTON BAKERIES LIMITED (RESPONDENT).

UNIT: "ALL GARAGE EMPLOYEES OF THE RESPONDENT WORKING AT KINGSTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (4 EMPLOYEES IN THE UNIT).

243-71-R: COUNCIL OF CONCRETE FORMING TRADE UNIONS (APPLICANT) V. KANSAS CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS, CARPENTERS' APPRENTICES, CONSTRUCTION LABOURERS AND REINFORCING RODMEN IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (9 EMPLOYEES IN THE UNIT).

284-71-R: READY-MIX, BUILDING SUPPLY, HYDRO & CONSTRUCTION DRIVERS, WAREHOUSEMEN & HELPERS, TEAMSTERS LOCAL UNION NO. 230 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. PORT HOPE READY MIX LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING AT OR OUT OF BOWMANVILLE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (2 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE SUBMISSIONS OF THE PARTIES).

(SEE DECISION [1971] OLRB REP. 263).

286-71-R: OPTICAL & PLASTIC TECHNICIANS & ALLIED WORKERS UNION LOCAL 67 OF U.H.C. & M.W.I.U. - C.L.C. (APPLICANT) V. IMPERIAL OPTICAL COMPANY LTD. (RESPONDENT).

UNIT #1: "ALL LABORATORY EMPLOYEES OF THE RESPONDENT IN ITS PRESCRIPTION LABORATORY AT ST. CATHARINES, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (12 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

UNIT #2: "ALL EMPLOYEES OF THE RESPONDENT IN ITS DISPENSARY AT ST. CATHARINES, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (4 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR THE PURPOSES OF CLARITY THE BOARD NOTED THE FURTHER AGREEMENT OF THE PARTIES THAT THE BOOKKEEPER IS PART OF THE OFFICE STAFF AND IS THEREFORE EXCLUDED FROM BOTH OF THE BARGAINING UNITS).

291-71-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. ROSEN DAIRY PRODUCTS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT MANAGER, PERSONS ABOVE THE RANK OF MANAGER, SALES REPRESENTATIVE AND OFFICE STAFF." (6 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

293-71-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 93 (APPLICANT) V. CENTRE-TOWN DEVELOPMENTS LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (9 EMPLOYEES IN THE UNIT).

302-71-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES LOCAL UNION 647 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. HUGH CURRY INVESTMENTS LIMITED, CARRYING ON BUSINESS AS UPLANDS TRANSPORT (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT AND WORKING OUT OF THE TOWNSHIP OF BAYHAM IN THE COUNTY OF ELGIN, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND OFFICE STAFF." (8 EMPLOYEES IN THE UNIT).

310-71-R: READY MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS TEAMSTERS LOCAL UNION No. 230 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. DENNIS MORAN LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT AND WORKING OUT OF BARRIE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND OFFICE STAFF." (17 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

312-71-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. MATTA BI MINES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT ITS MINE AND PLANT OPERATIONS SITUATE APPROXIMATELY 15 MILES FROM IGNACE, SAVE AND EXCEPT FOREMEN, SHIFT BOSSES, PERSONS ABOVE THE RANKS OF FOREMAN AND SHIFT BOSS, OFFICE AND CLERICAL STAFF, EMPLOYEES IN THE LABORATORY AND IN THE ENGINEERING, GEOLOGICAL AND METALLURGICAL DEPARTMENTS, SECURITY GUARDS, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD."

(10 EMPLOYEES IN THE UNIT).

313-71-R: RETAIL AND FOOD EMPLOYEES LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. FAMI-PRIX LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT AJAX, SAVE AND EXCEPT STORE MANAGER, PERSONS ABOVE THE RANK OF STORE MANAGER, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (3 EMPLOYEES IN THE UNIT).

324-71-R: LOCAL UNION 911 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS A.F.L. - C.I.O. - C.L.C. (APPLICANT) V. HARROW HYDRO-ELECTRIC COMMISSION (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HARROW, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (2 EMPLOYEES IN THE UNIT).

330-71-R: CHATHAM CONSTRUCTION WORKERS ASSOCIATION LOCAL NO. 53, AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. R. T. CONSTRUCTION (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF ESSEX AND KENT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

334-71-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. WATERLOO METAL STAMPINGS LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT KITCHENER, SAVE AND EXCEPT ASSISTANT FOREMEN, PERSONS ABOVE THE RANK OF ASSISTANT FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND STUDENTS ON A CO-OPERATIVE UNIVERSITY TRAINING PROGRAM." (71 EMPLOYEES IN THE UNIT).

335-71-R: OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA LOCAL UNION NO. 70 (APPLICANT) V. CONITE LTD. (RESPONDENT) V. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL #493 (INTERVENER).

UNIT: "ALL CEMENT MASONS AND CEMENT MASONS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A RADIUS OF THIRTY-FIVE MILES FROM THE

CITY OF SUDBURY FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (12 EMPLOYEES IN THE UNIT).

337-71-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. DOMINION STORES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN ITS RETAIL STORES AT CORNWALL, SAVE AND EXCEPT ASSISTANT STORE MANAGERS, PERSONS ABOVE THE RANK OF ASSISTANT STORE MANAGER, AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT." (30 EMPLOYEES IN THE UNIT).

349-71-R: COUNCIL OF CONCRETE FORMING TRADE UNIONS (APPLICANT) V. 228099 INVESTMENTS LIMITED OPERATING AS CAMP FORMING (RESPONDENT).

UNIT: "ALL CARPENTERS, CARPENTERS' APPRENTICES AND CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (8 EMPLOYEES IN THE UNIT).

350-71-R: COUNCIL OF CONCRETE FORMING TRADE UNIONS (APPLICANT) V. 236108 CONSTRUCTION LIMITED OPERATING AS AQUIZELL STEEL PLACING (RESPONDENT).

UNIT: "ALL REINFORCING RODMEN IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (12 EMPLOYEES IN THE UNIT).

351-71-R: BORDER TOOL & DIE EMPLOYEES' ASSOCIATION (APPLICANT) V. BORDER TOOL & DIE LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (58 EMPLOYEES IN THE UNIT).

361-71-R: SERVICE EMPLOYEES UNION, LOCAL 204 AFFILIATED WITH THE S.E.I.U., A.F. OF L., C.I.O., C.L.C. (APPLICANT) V. TULLAMORE NURSING HOME LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BRAMPTON, SAVE AND EXCEPT

PROFESSIONAL NURSING STAFF, PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR OR FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (50 EMPLOYEES IN THE UNIT).

382-71-R: READY-MIX, BUILDING SUPPLY, HYDRO & CONSTRUCTION DRIVERS, WAREHOUSEMEN & HELPERS, TEAMSTERS LOCAL UNION No. 230 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. PAT MASCIANGELO SR. CONSTRUCTION (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING AT OR OUT OF SUDBURY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (4 EMPLOYEES IN THE UNIT).

387-71-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1669 (APPLICANT) V. SILLMAN COMPANY (NORTHERN) LIMITED (RESPONDENT) V. INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRON WORKERS, LOCAL 759 (INTERVENER).

UNIT: "ALL MILLWRIGHTS AND MILLWRIGHTS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF THUNDER BAY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

389-71-R: RETAIL AND FOOD EMPLOYEES LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. SUN PARLOUR GREENHOUSE GROWERS CO-OPERATIVE LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL OFFICE EMPLOYEES OF THE RESPONDENT AT LEAMINGTON." (8 EMPLOYEES IN THE UNIT).

392-71-R: INTERNATIONAL UNION OF ELECTRICAL, RADIO & MACHINE WORKERS (APPLICANT) V. COMPO RECORDS (ONTARIO) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT CORNWALL, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (293 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

395-71-R: READY-MIX, BUILDING SUPPLY, HYDRO & CONSTRUCTION DRIVERS, WAREHOUSEMEN & HELPERS, TEAMSTERS LOCAL UNION No. 230, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. MELDON CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL TRUCK DRIVERS IN THE EMPLOY OF THE RESPONDENT WITHIN A RADIUS OF THIRTY-FIVE MILES FROM THE CITY OF SUDBURY FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES AND IN THE CIRCUMSTANCES OF THIS APPLICATION, FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT PERSONS ENGAGED IN TRANSPORTING SUPPLIES TO AND FROM JOB-SITES BY MEANS OF A TRUCK OF ONE TON WEIGHT OR LESS ARE NOT INCLUDED IN THE BARGAINING UNIT).

400-71-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE TIMMINS DISTRICT ROMAN CATHOLIC SEPARATE SCHOOL BOARD (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN ITS MAINTENANCE, SERVICE AND PLANT OPERATIONS, SAVE AND EXCEPT BUILDING SUPERINTENDENT, PERSONS ABOVE THE RANK OF BUILDING SUPERINTENDENT, OFFICE STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (51 EMPLOYEES IN THE UNIT).

401-71-R: INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES LOCAL UNION 1891 (APPLICANT) V. M & M INTERIOR COMPANY LIMITED (RESPONDENT).

UNIT: "ALL PAINTERS AND PAINTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT). (FOR THE PURPOSES OF CLARITY THE BOARD DECLARED THAT DRY-WALL TAPERS ARE INCLUDED IN THE ABOVE BARGAINING UNIT).

406-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1036 (APPLICANT) V. BALL BROTHERS LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THAT PORTION OF THE DISTRICT OF ALGOMA SOUTH OF THE 49TH PARALLEL OF LATITUDE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

407-71-R: CENTRAL ONTARIO DISTRICT COUNCIL, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. GREENBELT DEVELOPMENT CORPORATION LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF SIMCOE, THE DISTRICT OF MUSKOKA AND THE TOWNSHIPS OF RAMA, MARA AND THORAH IN THE COUNTY OF ONTARIO, SAVE

AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

408-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 527 (APPLICANT) V. GROUP BUILDING SYSTEM LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

412-71-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 93 (APPLICANT) V. A. F. CAMPBELL & SON LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

443-71-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. THE ASBESTOS COVERING COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

450-71-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. BRIDGE & TANK WESTERN LTD. (RESPONDENT).

UNIT: "ALL MILLWRIGHTS AND MILLWRIGHTS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF RAINY RIVER, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

APPLICATIONS CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

143-70-R: BOOT AND SHOE WORKERS' UNION CLC, AFL-CIO (APPLICANT) V. DORIS MILLS (CANADA) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN AND FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN

AND FORELADY, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (111 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		111
NUMBER OF PERSONS WHO CAST BALLOTS	100	
NUMBER OF SPOILED BALLOTS	2	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	78	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	20	

151-70-R: COMMUNICATIONS WORKERS OF AMERICA (AFL-CIO-CLC) (APPLICANT) V. TAS COMMUNICATIONS SERVICES, DIVISION OF INTERNATIONAL UTILITIES CORPORATION (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, SAVE AND EXCEPT MANAGERS, PERSONS ABOVE THE RANK OF MANAGER, OFFICE AND CLERICAL EMPLOYEES AND TELEPHONE SALES EMPLOYEES." (103 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		92
NUMBER OF PERSONS WHO CAST BALLOTS	100	
BALLOTS SEGREGATED AND NOT COUNTED	8	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	70	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	22	

212-71-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. RELIANCE ELECTRIC LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS DODGE CANADA DIVISION AT ITS ISLINGTON AVENUE PLANT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (14 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		14
NUMBER OF PERSONS WHO CAST BALLOTS	14	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	11	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	3	

240-71-R: TEXTILE WORKERS UNION OF AMERICA AFL-CIO-CLC (APPLICANT)
V. SOMERVILLE PLASTICS DIVISION OF SOMERVILLE INDUSTRIES LIMITED
(RESPONDENT) V. CANADIAN PLASTIC WORKERS UNION No. 182 (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT IN BRAMALEA,
SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF FORE-
MAN AND FORELADY, OFFICE AND SALES STAFF." (79 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		79
NUMBER OF PERSONS WHO CAST BALLOTS	70	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	53	
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	17	

301-71-R: TEXTILE WORKERS UNION OF AMERICA, AFL-CIO-CLC (APPLICANT)
V. GALT EX CO. LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT IN GALT, SAVE
AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF FOREMAN
AND FORELADY, CHIEF ENGINEER, SECURITY GUARDS, ENGINEERING STAFF,
MEDICAL SERVICES STAFF, OFFICE, CLERICAL AND SALES STAFF, TECHNICAL
AND LABORATORY PERSONNEL, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN
24 HOURS PER WEEK STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD
AND STUDENTS PARTICIPATING IN A FORMAL TRAINING PROGRAM IN CONJUNCTION
WITH A UNIVERSITY OF RECOGNIZED STANDING." (538 EMPLOYEES IN THE UNIT).
(HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (THE BOARD NOTED THE
AGREEMENT OF THE PARTIES THAT "MEDICAL SERVICES STAFF" DOES NOT INCLUDE
PRODUCTION EMPLOYEES WITH ST. JOHN'S AMBULANCE CERTIFICATES WHO PERFORM
FIRST AID DUTIES ON CALL). (THE BOARD FURTHER NOTED THE AGREEMENT OF
THE PARTIES THAT "CLERICAL" DOES NOT INCLUDE EMPLOYEES INVOLVED IN PLANT
PRODUCTION).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		537
NUMBER OF PERSONS WHO CAST BALLOTS	487	
NUMBER OF SPOILED BALLOTS	18	
BALLOTS SEGREGATED AND NOT COUNTED	2	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	343	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	124	

APPLICATIONS CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

18757-70-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. BASIL (SIMCOE) LIMITED (RESPONDENT) V. CENTRAL ONTARIO DISTRICT COUNCIL, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (INTERVENER).

UNIT: "ALL CARPENTERS, WORKING FOREMEN AND CARPENTER ALPRENTICES IN THE COUNTY OF SIMCOE, THE DISTRICT OF MUSKOKA, THE TOWNSHIP OF RAMA, MARA, AND THORAH IN THE COUNTY OF ONTARIO, INCLUDING ALL THE MUNICIPALITIES CONTAINED THEREIN, SAVE AND EXCEPT FOR NON-WORKING CARPENTER FOREMEN AND PERSONS ABOVE THAT RANK." (3 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS'		
LIST		3
NUMBER OF PERSONS WHO CAST BALLOTS	3	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	3	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF INTERVENER	0	

10-70-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. CHRYSLER TRUCK CENTRE HAMILTON LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON EMPLOYED IN ITS SERVICE AND PARTS DEPARTMENT, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (9 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS'		
LIST		15
NUMBER OF PERSONS WHO CAST BALLOTS	15	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	11	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	4	

76-70-R: LOCAL 278, INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA - AFL-CIO-CLC (APPLICANT) V. SEVEN-UP BOTTLING COMPANY (WINDSOR) LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, AND OFFICE STAFF." (28 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		28
NUMBER OF PERSONS WHO CAST BALLOTS	30	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	17	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	13	

77-70-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, U.A.W. (APPLICANT) V. CENTRAL STAMPINGS LIMITED (RESPONDENT).

- AND -

114-70-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. CENTRAL STAMPINGS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (28 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		35
NUMBER OF PERSONS WHO CAST BALLOTS	33	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT (U.A.W.)	10	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT (C.L.A.C.)	23	

APPLICATIONS FOR CERTIFICATION DISMISSED DURING MAY

NO VOTE CONDUCTED

11205-65-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. DI LORENZO CONSTRUCTION COMPANY (RESPONDENT). (NO EMPLOYEES).

11206-65-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. FORMING CONSTRUCTION LIMITED (RESPONDENT). (NO EMPLOYEES).

11207-65-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. TORONTO FORMING COMPANY (RESPONDENT). (NO EMPLOYEES).

11208-65-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. DILCON CONSTRUCTION LIMITED (RESPONDENT). (NO EMPLOYEES).

11209-65-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 506 (APPLICANT) V. FORMING CONSTRUCTION LIMITED (RESPONDENT). (NO EMPLOYEES).

11210-65-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 506 (APPLICANT) V. TORONTO FORMING COMPANY (RESPONDENT). (NO EMPLOYEES).

11211-65-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 506 (APPLICANT) V. DILCON CONSTRUCTION LIMITED (RESPONDENT). (NO EMPLOYEES).

11212-65-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 506 (APPLICANT) V. DI LORENZO CONSTRUCTION COMPANY (RESPONDENT). (NO EMPLOYEES).

11213-65-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 721 (APPLICANT) V. DI LORENZO CONSTRUCTION COMPANY (RESPONDENT). (NO EMPLOYEES).

11214-65-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 721 (APPLICANT) V. TORONTO FORMING COMPANY (RESPONDENT). (NO EMPLOYEES).

11215-65-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 721 (APPLICANT) V. FORMING CONSTRUCTION LIMITED (RESPONDENT). (NO EMPLOYEES).

11216-65-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 721 (APPLICANT) V. DILCON CONSTRUCTION LIMITED (RESPONDENT). (NO EMPLOYEES).

16048-69-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. BRAYSHAW'S STEEL LIMITED (RESPONDENT) V. SHOPMEN'S LOCAL UNION NO. 743 OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS (AFL, CIO, CLC) (INTERVENER). (67 EMPLOYEES).

18862-70-R: TEAMSTERS' LOCAL UNION NO. 230, READY MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS (APPLICANT) V. BLAW-KNOX OF CANADA LIMITED (RESPONDENT). (6 EMPLOYEES).

(SEE DECISION [1971] OLRB REP. 299).

75-70-R: LOCAL 278, INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA - AFL-CIO-CLC (APPLICANT) V. VERNORS BOTTLING COMPANY (WINDSOR) LIMITED (RESPONDENT). (NO EMPLOYEES).

160-70-R: LABORERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 493 (APPLICANT) V. INDUSTRIAL-MINE INSTALLATIONS LIMITED (RESPONDENT) V. UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 2486 (INTERVENER). (19 EMPLOYEES).

219-71-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. THU LOW EQUIPMENT LIMITED (RESPONDENT) V. TEAMSTERS' LOCAL UNION No. 230, READY MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS (INTERVENER). (8 EMPLOYEES).

235-71-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA LOCAL UNION #1450 (APPLICANT) V. COOPER-ELLIS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (12 EMPLOYEES).

238-71-R: LABORERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL UNION No. 597 (APPLICANT) V. COOPER-ELLIS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (13 EMPLOYEES).

250-71-R: BRICKLAYERS, MASONS, AND PLASTERERS INTERNATIONAL UNION OF AMERICA, LOCAL No. 30 (APPLICANT) V. EASTERN CONSTRUCTION COMPANY LIMITED (RESPONDENT). (20 EMPLOYEES).

276-71-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. SIMCOE MECHANICAL CONTRACTING LIMITED (RESPONDENT) V. UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL UNION 813 (INTERVENER). (2 EMPLOYEES).

298-71-R: GENERAL TRUCK DRIVERS' UNION LOCAL 938 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. LOCK CITY CONSTRUCTION CO. LTD. (RESPONDENT). (5 EMPLOYEES).

308-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. K. H. PRESTON CONSTRUCTION LIMITED (RESPONDENT). (13 EMPLOYEES).

314-71-R: CHATHAM CONSTRUCTION WORKERS ASSOCIATION, LOCAL No. 53, AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. ERIC'S AND ED'S WELDING (RESPONDENT) V. INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRON WORKERS - LOCAL UNION No. 700 (INTERVENER). (4 EMPLOYEES).

343-71-R: CHATHAM CONSTRUCTION WORKERS ASSOCIATION, LOCAL No. 53, AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. ERIC'S AND ED'S WELDING (RESPONDENT). (2 EMPLOYEES).

381-71-R: READY-MIX, BUILDING SUPPLY, HYDRO & CONSTRUCTION DRIVERS, WAREHOUSEMEN & HELPERS, TEAMSTERS LOCAL UNION NO. 230, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. DELL COAL LIMITED (RESPONDENT) V. UNITED STEELWORKERS OF AMERICA (INTERVENER). (75 EMPLOYEES).

417-71-R: BRICKLAYERS, MASONS, AND PLASTERERS INTERNATIONAL UNION OF AMERICA, LOCAL # 10 (APPLICANT) V. CANADIAN ASBESTOS COMPANY (RESPONDENT). (2 EMPLOYEES).

CERTIFICATION DISMISSED SUBSEQUENT TO PRE-HEARING VOTE

14-70-R: GENERAL TRUCK DRIVERS' LOCAL 938 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. WILSON'S TRUCK LINES LIMITED (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT WORKING IN AND OUT OF METROPOLITAN TORONTO, PERTH, SAULT STE. MARIE, ESPANOLA AND COLBORNE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, DISPATCHERS, BROKERS, OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (153 EMPLOYEES).

NUMBER OF PERSONS WHO CAST BALLOTS	136
NUMBER OF SPOILED BALLOTS	1
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	6
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	129

40-70-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. UNIVERSITY OF WINDSOR (RESPONDENT) V. INTERNATIONAL UNION, UNITED PLANT GUARD WORKERS OF AMERICA, AMALGAMATED PLANT GUARDS, LOCAL 1958 (INTERVENER).

VOTING CONSTITUENCY #1: "ALL CLERICAL, SECRETARIAL AND OFFICE PERSONNEL EMPLOYED IN THE UNIVERSITY OF WINDSOR AT WINDSOR, SAVE AND EXCEPT THE FOLLOWING: SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR; STUDENTS; PERSONS EMPLOYED TO UNDERTAKE SPECIFIC SPONSORED RESEARCH PROJECTS; PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK; PERSONS EMPLOYED IN THE PERSONNEL DEPARTMENT, THE MEDIA CENTRE AND THE COMPUTER CENTRE; FULL AND PART TIME OFFICERS OF INSTRUCTION, TOGETHER WITH INSTRUCTORS, SESSIONAL APPOINTEES, TEACHING ASSISTANTS AND POST DOCTORATE FELLOWS ENGAGED IN TEACHING AND/OR RESEARCH; REGISTERED NURSES; PROFESSIONAL, PRE-PROFESSIONAL AND SUB-PROFESSIONAL LIBRARIANS AND PERSONS EMPLOYED IN THE UNIVERSITY LIBRARY HOLDING THE

RANK OF ASSISTANT DEPARTMENT HEAD AND ABOVE SUCH RANK; ASSISTANT REGISTRARS AND ADMISSIONS OFFICERS; THE CONFIDENTIAL SECRETARIES TO THE FOLLOWING PERSONS: THE PRESIDENT, THE VICE-PRESIDENTS, THE ASSISTANT VICE-PRESIDENT - ADMINISTRATION, THE SECRETARY OF THE BOARD OF GOVERNORS, THE SECRETARY TO THE DIRECTOR OF THE COMPUTER CENTRE, THE SECRETARY TO THE DIRECTOR OF THE MEDIA CENTRE, THE REGISTRAR, THE UNIVERSITY LIBRARIAN, THE LAW LIBRARIAN, THE DEPUTY UNIVERSITY LIBRARIAN, THE ASSISTANT LIBRARIAN FOR TECHNICAL SERVICES, THE ASSISTANT LIBRARIAN FOR PUBLIC SERVICES, THE DEAN OF THE FACULTY OF EDUCATION, THE DEAN OF THE FACULTY OF LAW, THE DIRECTOR OF INFORMATION SERVICES, THE DIRECTOR OF FINANCE, THE DIRECTOR OF PHYSICAL FACILITY, THE DEAN OF STUDENT AFFAIRS, THE DIRECTOR OF ADMINISTRATIVE SERVICES, THE DIRECTOR OF THE DEVELOPMENT FUND, THE DIRECTOR OF THE UNIVERSITY CENTRE, THE LAW LIBRARIAN, THE DEAN OF PHYSICAL AND HEALTH EDUCATION, THE ASSISTANTS TO THE PRESIDENT AND THE DIRECTOR OF PLANNING AND CONSTRUCTION; THE SPECIAL ASSISTANTS TO THE DEAN OF BUSINESS ADMINISTRATION, THE DEAN OF APPLIED SCIENCE, THE DEAN OF ARTS AND SCIENCE AND THE DIRECTOR OF EXTENSION; TOGETHER WITH ALL PERSONS COVERED BY SUBSISTING COLLECTIVE AGREEMENTS WITH THE UNITED PLANT GUARD WORKERS OF AMERICA LOCAL 1958; CANADIAN UNION OF OPERATING ENGINEERS LOCAL 102 AND THE CANADIAN UNION OF PUBLIC EMPLOYEES LOCAL 1001; TOGETHER WITH THE TECHNICAL PERSONNEL COVERED BY THE BARGAINING UNIT DESCRIBED IN A CERTAIN APPLICATION FOR CERTIFICATION MADE BY C.U.P.E., DATED FEBRUARY 1971." (299 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		299
NUMBER OF PERSONS WHO CAST BALLOTS	242	
BALLOTS SEGREGATED AND NOT COUNTED	6	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	117	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	119	

VOTING CONSTITUENCY #2: "ALL TECHNICAL PERSONS EMPLOYED IN THE UNIVERSITY OF WINDSOR AT WINDSOR, SAVE AND EXCEPT THE FOLLOWING: FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN; FULL AND PART TIME OFFICERS OF INSTRUCTION TOGETHER WITH INSTRUCTORS, SESSIONAL APPOINTEES, TEACHING ASSISTANT AND POST DOCTORAL FELLOWS ENGAGED IN TEACHING AND/OR RESEARCH; PERSONS EMPLOYED TO UNDERTAKE SPECIFIC SPONSORED RESEARCH PROJECTS; PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK; STUDENTS; PERSONS EMPLOYED IN THE PERSONNEL DEPARTMENT, THE LIBRARY AND THE OFFICE OF DUPLICATING SERVICES; THE FACILITIES MANAGER AND ASSISTANT FACILITY MANAGER; FACULTY OF PHYSICAL AND HEALTH EDUCATION AND PERSONS COVERED BY SUBSISTING COLLECTIVE AGREEMENTS WITH THE UNITED PLANT GUARD WORKERS OF AMERICA LOCAL 1958; CANADIAN UNION OF OPERATING ENGINEERS LOCAL 102 AND THE CANADIAN UNION OF PUBLIC EM-

PLOYEES, LOCAL 1001 AND THE CLERICAL, SECRETARIAL AND OFFICE PERSONNEL COVERED BY THE BARGAINING UNIT DESCRIBED IN A CERTAIN APPLICATION FOR CERTIFICATION MADE BY C.U.P.E. DATED FEBRUARY 1971." (81 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		81
NUMBER OF PERSONS WHO CAST BALLOTS	71	
NUMBER OF SPOILED BALLOTS	1	
BALLOTS SEGREGATED AND NOT COUNTED	20	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	35	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	15	

(SEE DECISION [1971] OLRB REP. 262).

57-70-R: INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA AFL-CIO-CLC (APPLICANT) V. L. J. MCGUINNESS AND CO. LIMITED (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, PRODUCTION CLERKS, QUALITY CONTROL TECHNICIANS, OFFICE AND SALES STAFF, CHIEF ENGINEER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (88 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		95
NUMBER OF PERSONS WHO CAST BALLOTS	94	
NUMBER OF SPOILED BALLOTS	1	
BALLOTS SEGREGATED AND NOT COUNTED	3	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	22	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	68	

87-70-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) V. NORTHERN ELECTRIC COMPANY LIMITED (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT WORKING IN THE WAREHOUSE AT 143 LAKESHORE BOULEVARD, TORONTO, SAVE AND EXCEPT MANAGER, PERSONS ABOVE THE RANK OF MANAGER, OFFICE AND SALES STAFF." (30 EMPLOYEES).

(THE BOARD FURTHER STATED IN ITS DECISION DATED MARCH 22ND, 1971:

THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT THIS APPLICATION REFERS TO THE WAREHOUSE OPERATION.)

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		30
NUMBER OF PERSONS WHO CAST BALLOTS	30	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	10	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	20	

110-70-R: LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, S.E.I.U., A.F. OF L., C.I.O., C.L.C. (APPLICANT) V. VICTORIA HOSPITAL BOARD OF TRUSTEES OF THE CITY OF LONDON (RESPONDENT) V. THE CIVIL SERVICE ASSOCIATION OF ONTARIO (INC.) (INTERVENER).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSES, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, UNDERGRADUATE DIETITIANS, PERSONS ENGAGED IN RESEARCH WORK, SOCIAL WORKERS, TECHNICAL PERSONNEL, CHIEF ENGINEER, ASSISTANT CHIEF ENGINEER, RESIDENCE DIRECTOR, SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR OR FOREMAN, OFFICE AND CLERICAL STAFF, SECURITY GUARDS, PERSONS COVERED BY A COLLECTIVE AGREEMENT BETWEEN VICTORIA HOSPITAL AND LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, DATED 5TH DAY OF FEBRUARY, 1969, PERSONS COVERED BY THE CERTIFICATE ISSUED BY THE ONTARIO LABOUR RELATIONS BOARD TO THE CIVIL SERVICE ASSOCIATION OF ONTARIO (INC), STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (272 EMPLOYEES).

(THE BOARD FURTHER STATED IN ITS DECISION DATED APRIL 5TH, 1971:

4. FOR THE PURPOSE OF CLARITY THE BOARD NOTES

- (A) THAT VETERINARIANS AND PERSONS WITH OTHER GRADUATE DEGREES ARE NOT INCLUDED IN THE VOTING CONSTITUENCY;
- (B) THE TERM "TECHNICAL PERSONNEL" INCLUDES GRADUATE AND UNDERGRADUATE SPEECH THERAPISTS, PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS AND PSYCHOLOGISTS, AND ALSO ELECTRO-ENCEPHALOGRAPHISTS, ELECTRICAL SHOCK THERAPISTS, AUTOPSY MASTERS, LA-

BORATORY, RADIOLOGICAL, PATHOLOGICAL, CARDIOLOGICAL, INHALATION THERAPY, ANESTHESIA AND GLAUCOMA TECHNICIANS, PERSONS IN TRAINING TO BECOME SUCH TECHNICAL PERSONNEL AND INSTRUCTOR TECHNOLOGISTS OF TECHNICIANS).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		274
NUMBER OF PERSONS WHO CAST BALLOTS	184	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	74	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	110	

245-71-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. GARLAND COMMERCIAL RANGES LIMITED (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMEN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (39 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		39
NUMBER OF PERSONS WHO CAST BALLOTS	39	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	10	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	29	

300-71-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. THE ST. CATHARINES GENERAL HOSPITAL (RESPONDENT) V. LOCAL 772, INTERNATIONAL UNION OF OPERATING ENGINEERS (INTERVENER).

VOTING CONSTITUENCY: "ALL STATIONARY ENGINEERS OF THE RESPONDENT AT ST. CATHARINES, SAVE AND EXCEPT THE CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF CHIEF ENGINEER." (5 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		5
NUMBER OF PERSONS WHO CAST BALLOTS	5	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	0	
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	5	

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

18907-70-R: GENERAL TRUCK DRIVERS UNION LOCAL 938 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. DOMINION BRIDGE COMPANY LIMITED MOUNT DENNIS PLANT (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (INTERVENER #1) V. UNITED STEELWORKERS OF AMERICA (INTERVENER #2) V. DRAFTSMEN'S ASSOCIATION OF ONTARIO, LOCAL 164, AMERICAN FEDERATION OF TECHNICAL ENGINEERS, A.F.L.-C.I.O., C.L.C. (INTERVENER #3).

UNIT: "ALL HIGHWAY DRIVERS EMPLOYED AT THE MOUNT DENNIS PLANT OF THE RESPONDENT IN METROPOLITAN TORONTO WHO HAUL STEEL, SAVE AND EXCEPT SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR." (10 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		9
NUMBER OF PERSONS WHO CAST BALLOTS	9	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	2	
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER #2, UNITED STEELWORKERS OF AMERICA	7	

18988-70-R: CANADIAN TEXTILE AND CHEMICAL UNION (APPLICANT) V. CANADIAN JOHNS-MANVILLE CO., LIMITED (RESPONDENT) V. INTERNATIONAL CHEMICAL WORKERS UNION LOCAL 346 (INTERVENER).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT AT PORT UNION, SAVE AND EXCEPT OFFICE STAFF (BOTH GENERAL OFFICE AND FACTORY OFFICES), GUARDS, STATIONARY ENGINEERS, POWER HOUSE FIREMEN, WATCHMEN, FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN." (457 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		436
NUMBER OF PERSONS WHO CAST BALLOTS	433	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	199	
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	234	

44-70-R: BAKERY & CONFECTIONERY WORKERS' INTERNATIONAL UNION OF AMERICA, LOCAL 264 (APPLICANT) V. BARCA'S BAKERY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT 298 CROWLAND AVENUE IN WELLAND, SAVE AND EXCEPT MANAGER, PERSONS ABOVE THE RANK OF MANAGER, OFFICE STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (15 EMPLOYEES IN THE UNIT).

(THE BOARD FURTHER STATED IN ITS DECISION DATED MARCH 24TH, 1971, IN THE FOLLOWING PARAGRAPHS:

4. ...THE BOARD DECLARES THAT THE THREE PRODUCTION EMPLOYEES WHO ALSO SERVE CUSTOMERS AT THE SALES OUTLET AT THE BAKERY AS PART OF THEIR DUTIES ARE INCLUDED IN THE BARGAINING UNIT, SINCE THEY SPEND THE GREAT MAJORITY OF THEIR TIME ENGAGED IN PRODUCTION WORK.
5. ...THE BOARD DECLARES THAT THE TWO PERSONS EMPLOYED IN A FULL-TIME CAPACITY AS SALES CLERKS AT THE RETAIL SALES OUTLET IN THE SHOPPING PLAZA ARE NOT INCLUDED IN THE BARGAINING UNIT.
6. ...THE BOARD NOTES THE AGREEMENT OF THE PARTIES RECORDED WITH THE EXAMINER APPOINTED IN THIS MATTER THAT LENA BARCA DOES NOT EXERCISE MANAGERIAL FUNCTIONS AND IS NOT EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND IS INCLUDED IN THE BARGAINING UNIT.
7. ...THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT PATRICK VILLELLA IS CLASSIFIED AS MANAGER.
8. ...THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT THE ROUTE SALESMEN ARE INCLUDED IN THE BARGAINING UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS'

LIST	13
NUMBER OF PERSONS WHO CAST BALLOTS	12
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	1
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	11

52-70-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE TRUSTEES OF THE OTTAWA CIVIC HOSPITAL (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (INTERVENER) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT #1: "ALL EMPLOYEES OF THE SOCIAL WORK DEPARTMENT OF THE RESPONDENT AT OTTAWA, SAVE AND EXCEPT THE DEPARTMENT HEAD AND THE FIRST ASSISTANT TO THE DEPARTMENT HEAD, PERSONS REGULARLY EMPLOYED FOR NOT

MORE THAN 24 HOURS PER WEEK, AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENTS ENTERED INTO BY THE RESPONDENT." (15 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		13
NUMBER OF PERSONS WHO CAST BALLOTS	13	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	7	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	6	

UNIT #2: "ALL EMPLOYEES OF THE SOCIAL WORK DEPARTMENT OF THE RESPONDENT AT OTTAWA REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, SAVE AND EXCEPT THE DEPARTMENT HEAD AND THE FIRST ASSISTANT TO THE DEPARTMENT HEAD, AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENTS ENTERED INTO BY THE RESPONDENT, AND PERSONS COVERED BY BARGAINING UNIT #1." (2 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		2
NUMBER OF PERSONS WHO CAST BALLOTS	2	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	0	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	2	

156-70-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE DUFFERIN-PEEL COUNTY ROMAN CATHOLIC SEPARATE SCHOOL BOARD (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF DUFFERIN AND PEEL, ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS, SAVE AND EXCEPT SUPERVISORS AND FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR OR FOREMAN, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (44 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		44
NUMBER OF PERSONS WHO CAST BALLOTS	43	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	14	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	29	

197-70-R: INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) V. CONTINENTAL CAN COMPANY OF CANADA LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT ITS PLANT AT LONDON, SAVE AND EXCEPT THE PLANT MANAGER'S SECRETARY, THE PLANT NURSE, SECRETARY TO THE INDUSTRIAL RELATIONS SUPERVISOR, THE PURCHASING AGENT, SALESMEN, SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (18 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		17
NUMBER OF PERSONS WHO CAST BALLOTS	17	
BALLOTS SEGREGATED AND NOT COUNTED	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	7	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	9	

216-71-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES LOCAL 647 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. EASTWOOD FOOD SERVICES LIMITED (RESPONDENT).

UNIT: "ALL HOSTESSES EMPLOYED BY THE RESPONDENT IN ITS VENDING DIVISION AT METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (13 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		13
NUMBER OF PERSONS WHO CAST BALLOTS	13	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	4	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	9	

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING MAY

18855-70-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (APPLICANT) V. MODULAR PRECAST CONCRETE STRUCTURES LIMITED AND COMPANY (RESPONDENT). (17 EMPLOYEES).

220-71-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT) V. ARROW ACCOUSTICS AND FLOORING COMPANY LIMITED (RESPONDENT). (4 EMPLOYEES).

292-71-R: UNITED RUBBER CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA AFL CIO CLC (APPLICANT) V. UNITED TIRE AND RUBBER COMPANY OF CANADA LIMITED (RESPONDENT). (13 EMPLOYEES).

352-71-R: PLANT EMPLOYEES ASSOCIATION OF THE FRONTENAC COUNTY BOARD OF EDUCATION (APPLICANT) V. THE FRONTENAC COUNTY BOARD OF EDUCATION (RESPONDENT). (224 EMPLOYEES).

372-71-R: UNITED CEMENT, LIME AND GYPSUM WORKERS INTERNATIONAL UNION, LOCAL UNION No. 394, A.F.L. C.I.O. C.L.C. (APPLICANT) V. BRANTFORD CONCRETE PIPE COMPANY LIMITED (RESPONDENT). (17 EMPLOYEES).

398-71-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. SANCO CONSTRUCTION (LONDON) LIMITED (RESPONDENT) V. READY MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS TEAMSTERS LOCAL UNION No. 230, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (INTERVENER). (18 EMPLOYEES).

403-71-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. DOUGLAS MEMORIAL HOSPITAL (RESPONDENT). (5 EMPLOYEES).

436-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1036 (APPLICANT) V. McLEAN-PEISTER LTD. 3328 KING ST. EAST, KITCHENER, ONTARIO (RESPONDENT). (5 EMPLOYEES).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED

OF DURING MAY

318-71-R: MAURICE GREZEL (APPLICANT) V. BAKERY AND CONFECTIONERY WORKERS' INTERNATIONAL UNION OF AMERICA, LOCAL 483 (RESPONDENT) V. SOO DAIRIES LIMITED (INTERVENER). (44 EMPLOYEES). (DISMISSED).

319-71-R: ART GAGNON (APPLICANT) V. BAKERY AND CONFECTIONERY WORKERS' INTERNATIONAL UNION OF AMERICA, LOCAL 483 (RESPONDENT) V. MODEL DAIRY (SAULT) LIMITED (INTERVENER). (24 EMPLOYEES). (DISMISSED).

440-71-R: GEORGE STEPHEN (APPLICANT) V. THE INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (U.A.W.) (RESPONDENT). (48 EMPLOYEES). (WITHDRAWN).

APPLICATIONS FOR DECLARATION OF SUCCESSOR STATUS DISPOSED OF DURINGMAY

11-70-R: AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. BEEF TERMINAL LIMITED (RESPONDENT). (GRANTED).

(SEE DECISION [1971] OLRB REP. 300).

204-70-R: CANADIAN UNION OF PUBLIC EMPLOYEES LOCAL 11 (APPLICANT) V. THE HYDRO-ELECTRIC COMMISSION OF THE BOROUGH OF NORTH YORK (RESPONDENT). (GRANTED).

APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURINGMAY

221-71-U: MAREL CONTRACTORS (APPLICANT) V. 1) THE WOOD, WIRE & METAL LATHERS INTERNATIONAL UNION LOCAL 562; 2) GUS SIMONE, THE WOOD, WIRE & METAL LATHERS INTERNATIONAL UNION, LOCAL 562; 3) LABOURERS' UNION, LOCAL 506; 4) JACK WATSON, LABOURERS' UNION, LOCAL 506; 5) INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793; 6) RON ALAINE, INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (RESPONDENTS). (WITHDRAWN).

322-71-U: THE NIAGARA SOUTH BOARD OF EDUCATION (APPLICANT) V. THOMAS ANDERSON ET AL (RESPONDENTS). (GRANTED).

(SEE DECISION [1971] OLRB REP. 274).

323-71-U: THE NIAGARA SOUTH BOARD OF EDUCATION (APPLICANT) V. CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 486 (RESPONDENT). (GRANTED).

347-71-U: THE NIAGARA SOUTH BOARD OF EDUCATION (APPLICANT) V. EMILLE ARSENAULT ET AL (RESPONDENTS). (WITHDRAWN).

348-71-U: THE NIAGARA SOUTH BOARD OF EDUCATION (APPLICANT) V. CANADIAN UNION OF PUBLIC EMPLOYEES LOCAL 468 (RESPONDENT). (WITHDRAWN).

374-71-U: EAST SIDE PLATING (CANADA) LIMITED, WINDSOR BUMPER COMPANY LIMITED, AND EAST SIDE STAMPING COMPANY LIMITED (APPLICANTS) V. NEJAT GORICA, ELIO LISI, DAVID LACHAPELLE, DANIEL FLYNN, FOREST RIBBLE, HERMAN ST. PIERRE (RESPONDENTS). (WITHDRAWN).

404-71-U: EAST SIDE PLATING (CANADA) LIMITED, WINDSOR BUMPER COMPANY LIMITED, AND EAST SIDE STAMPING LIMITED (APPLICANTS) V. PAOLO AUITO, QUIRINO GESUALE, ANTONIO LOMBARDO, UBALDO MOLLIKA, FELICE ISABELLA, DOMENICO LUCIANI, MARIO SEMENTILLI, JOS NOVIELLI, DOMENICO FAUSTINI, FRANCESCO ROSSI, VINCENZO GRILLO, SALVATORE MESSINA, ANTONIO FANARA, GIOVANNI SCHEMBRI, DOMENICO PETRILLI, GIOVANNI LUCIANI, PETER CENTOFANTI, GIOVANNI FANARA, GAETANO EVOLA, GIOVANNI OLIVERIO, GINO AIELLO, BRUNO TOMASELLA, PAOLO CECCACCI, MARIO PULLO, GIOACCHINO VULTAGGIO, GINO BRACCO, GIACOMO AGUGLIARO, CARLO FAUSTINI, LARRY FURDAL (RESPONDENTS). (GRANTED).

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING MAY

149-70-U: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION 1687 (APPLICANT) V. EXCELLENCE ELECTRICAL CONSTRUCTION AND KURT MELHORN (RESPONDENTS). (GRANTED).

184-70-U: RALPH M. PARSONS CONSTRUCTION CO. OF CANADA LIMITED (APPLICANT) V. ROSAIRE PARADIS ET AL (RESPONDENTS). (GRANTED).

186-70-U: RALPH M. PARSONS CONSTRUCTION CO. OF CANADA LIMITED (APPLICANT) V. NORMAN J. DOW ET AL (RESPONDENTS). (GRANTED).

187-70-U: RALPH M. PARSONS CONSTRUCTION CO. OF CANADA LIMITED (APPLICANT) V. ANDRE BESSETTE ET AL (RESPONDENTS). (GRANTED).

188-70-U: RALPH M. PARSONS CONSTRUCTION CO. OF CANADA LIMITED (APPLICANT) V. RENE DUMONT ET AL (RESPONDENTS). (GRANTED).

190-70-U: RALPH M. PARSONS CONSTRUCTION CO. OF CANADA LIMITED (APPLICANT) V. ROGER LALONDE ET AL (RESPONDENTS). (GRANTED).

191-70-U: RALPH M. PARSONS CONSTRUCTION CO. OF CANADA LIMITED (APPLICANT) V. JOHN BERGERON ET AL (RESPONDENTS). (GRANTED).

272-71-U: DRAFTSMEN'S ASSOCIATION OF ONTARIO, LOCAL 164, AMERICAN FEDERATION OF TECHNICAL ENGINEERS, A.F.L.-C.I.O., C.L.C. (APPLICANT) V. PROVINCIAL CRANE DIVISION OF DOMINION BRIDGE COMPANY LIMITED (RESPONDENT). (GRANTED).

326-71-U: THE PRESTOLITE COMPANY DIVISION OF ELTRA OF CANADA LIMITED (APPLICANT) V. DOREEN ADLER, MURIEL AMOS ET AL (RESPONDENTS). (WITHDRAWN).

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18794-70-U: SUDBURY TYPOGRAPHICAL UNION, No. 846 (COMPLAINANT) v. THE JOURNAL PRINTING COMPANY (RESPONDENT). (WITHDRAWN).

18928-70-U: OFFICE & PROFESSIONAL EMPLOYEES INTERNATIONAL UNION, LOCAL 327 (COMPLAINANT) v. THE BOARD OF HEALTH NORTHWESTERN HEALTH UNIT (RESPONDENT). (DISMISSED).

(SEE DECISION [1971] OLRB REP. 256).

7-70-U: OFFICE & PROFESSIONAL EMPLOYEES' INTERNATIONAL UNION LOCAL 131 (COMPLAINANT) v. JOHNSON CONTROLS LTD. (RESPONDENT). (GRANTED).

26-70-U: AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (COMPLAINANT) v. PASQUALE BROS. LIMITED (RESPONDENT). (DISMISSED).

(SEE DECISION [1971] OLRB REP. 283).

55-70-U: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION No. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (COMPLAINANT) v. A.B.C. AMBULANCE SERVICES LIMITED (RESPONDENT). (WITHDRAWN).

64-70-U: LOCAL 242 LITHOGRAPHERS AND PHOTOENGRAVERS INTERNATIONAL UNION (COMPLAINANT) v. AD PLATE LIMITED (RESPONDENT). (WITHDRAWN).

217-71-U: ANTHONY ODORICO (COMPLAINANT) v. BRICKLAYERS', MASONS' AND PLASTERERS' INTERNATIONAL UNION OF AMERICA (RESPONDENT). (WITHDRAWN).

218-71-U: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (COMPLAINANT) v. SWIFT CANADIAN CO., LIMITED (RESPONDENT). (WITHDRAWN).

251-71-U: GIACOMO GIAVINAZZO (COMPLAINANT) v. BRICKLAYERS', MASONS' AND PLASTERERS' INTERNATIONAL UNION OF AMERICA (RESPONDENT). (WITHDRAWN).

252-71-U: VINCENT PICCONE (COMPLAINANT) v. BRICKLAYERS' MASONS' AND PLASTERERS' INTERNATIONAL UNION OF AMERICA (RESPONDENT). (WITHDRAWN).

279-71-U: RETAIL CLERKS INTERNATIONAL ASSOCIATION (COMPLAINANT) V. ZEHR'S MARKETS LIMITED (RESPONDENT). (WITHDRAWN).

344-71-U: RETAIL CLERKS INTERNATIONAL ASSOCIATION (COMPLAINANT) V. ADAMS FURNITURE CO., LIMITED (RESPONDENT). (WITHDRAWN).

354-71-U: LOCAL 278, INTERNATIONAL UNION OF UNITED BREWERY, CEREAL, SOFT DRINK AND DISTILLERY WORKERS' OF AMERICA - AFL-CIO-CLC (COMPLAINANT) V. SEVEN-UP BOTTLING COMPANY (WINDSOR) LIMITED (RESPONDENT). (WITHDRAWN).

355-71-U: LOCAL 278, INTERNATIONAL UNION OF UNITED BREWERY, CEREAL, SOFT DRINK AND DISTILLERY WORKERS' OF AMERICA - AFL-CIO-CLC (COMPLAINANT) V. SEVEN-UP BOTTLING COMPANY (WINDSOR) LIMITED (RESPONDENT). (WITHDRAWN).

APPLICATION UNDER SECTION 35(A) DISPOSED OF DURING MAY

165-70-M: CHARLES SHELDON HOOVER (APPLICANT) V. UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA AND ITS LOCAL 523 (RESPONDENT TRADE UNION) V. UNION CARBIDE CANADA LIMITED (RESPONDENT EMPLOYER). (WITHDRAWN).

APPLICATION FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT

353-71-M: ANTHES EASTERN LIMITED (COMPANY) V. THE INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA AND ITS LOCAL 199 C.L.C. (TRADE UNION). (GRANTED).

APPLICATION UNDER SECTION 47A DISPOSED OF DURING MAY

18786-70-M: RETAIL CLERKS UNION LOCALS NO. 206 AND 486 (APPLICANTS) V. SUPER CITY DISCOUNT FOODS LIMITED AND LOBLAW GROCETERIAS CO., LIMITED AND UNION OF CANADIAN RETAIL EMPLOYEES (RESPONDENTS).

VOTING CONSTITUENCY #1: "ALL FULL-TIME EMPLOYEES OF LOBLAW GROCETERIAS CO., LIMITED AT 2433 PRINCESS STREET, KINGSTON, SAVE AND EXCEPT STORE MANAGERS, PERSONS ABOVE THE RANK OF STORE MANAGER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD (HEREINAFTER CALLED VOTING CONSTITUENCY #1)."

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		10
NUMBER OF PERSONS WHO CAST BALLOTS	10	
NUMBER OF SPOILED BALLOTS	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANTS	0	
NUMBER OF BALLOTS MARKED IN FAVOUR OF UNION OF CANADIAN RETAIL EM- PLOYEES	9	

APPLICATIONS FOR DETERMINATION UNDER SECTION 79(2) DISPOSED OF DURING

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18817-70-M: THE HYDRO-ELECTRIC COMMISSION OF NORTH BAY (APPLICANT) v. LOCAL 72, OF THE CANADIAN UNION OF PUBLIC EMPLOYEES (RESPONDENT).

18827-70-M: THE WINDSOR UTILITIES COMMISSION (APPLICANT) v. LOCAL UNION No. 911 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, A.F. OF L. - C.I.O. (RESPONDENT).

(SEE DECISION [1971] OLRB REP. 296).

195-70-M: THE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 1220 (APPLICANT) v. THE CORPORATION OF THE TOWNSHIP OF SALTFLEET (RESPONDENT). (WITHDRAWN).

295-71-M: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) v. THE MUNICIPAL CORPORATION OF THE TOWN OF PORT ELGIN (RESPONDENT).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

18626-70-R: UNITED CEMENT, LIME AND GYPSUM WORKERS INTERNATIONAL UNION, CLC (APPLICANT) v. GENERAL CONCRETE LTD. (RESPONDENT) v. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 772 (INTERVENER #1) v. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (INTERVENER #2) v. CANADIAN BUILDING PRODUCTS WORKERS UNION 157 N.C.C.L. (INTERVENER #3). (REQUEST DENIED).

95-70-R: CANADIAN UNION OF GENERAL EMPLOYEES (APPLICANT) v. TERPAK AUTOMATED SYSTEMS LIMITED (RESPONDENT) v. EMPLOYEE (OBJECTOR). (REQUEST DENIED).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - PROSECUTION

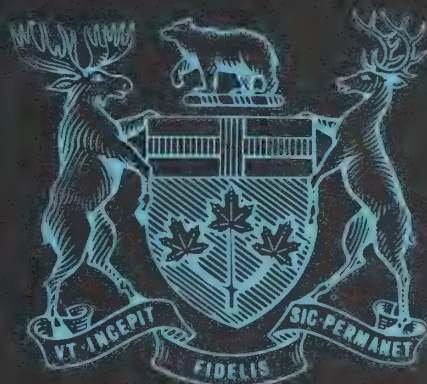
188-70-U: RALPH M. PARSONS CONSTRUCTION CO. OF CANADA LIMITED (APPLICANT) V. RENE DUMONT ET AL (RESPONDENTS). (REQUEST DENIED).

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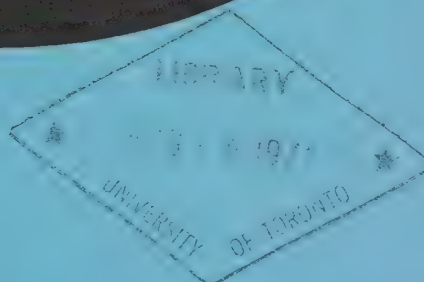
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ONTARIO

Monthly Report



ONTARIO LABOUR RELATIONS BOARD

CANADA
1954

ONTARIO LABOUR RELATIONS BOARD REPORTS

A MONTHLY SERIES OF DECISIONS FROM THE

ONTARIO LABOUR RELATIONS BOARD

CITED [1971] OLRB REP.

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MENT TO DEAL FURTHER WITH IT. IN THESE CIRCUMSTANCES I DO NOT SEE THAT THERE WAS ANYTHING CONTRARY TO NATURAL JUSTICE IN ADMITTING IT."

9. NO APPLICATION WAS MADE FOR AN ADJOURNMENT TO DEAL FURTHER WITH THE MATTER. HAVING REGARD THEREFORE TO THE PRACTICE OF THE BOARD IN CASES OF THIS TYPE AND CONSIDERING THAT THERE IS OTHER EVIDENCE WHICH IS PROPERLY BEFORE US, WE ACCEPT THE LETTER IN THE PARTICULAR CIRCUMSTANCES OF THIS CASE AS BEING CONFIRMATORY OF THE FACT THAT THERE HAS BEEN A MERGER, AMALGAMATION OR TRANSFER OR JURISDICTION.

10. ALTERNATIVELY, WE ARE OF THE OPINION THAT EVIDENCE OF THIS TYPE IS ADMISSIBLE BEFORE THIS TRIBUNAL BOTH AT COMMON LAW SEE WILSON V. ESQUMALT AND NANAIMO RY. CO. (1922) 61 D.L.R. 1 (P.C.); NORTHWESTERN UTILITIES LTD. V. EDMONTON (1929) 2 D.L.R. 4 (SCC) AND PURSUANT TO SECTION 77(2)(C) OF THE LABOUR RELATIONS ACT WHICH PROVIDES AS FOLLOWS:

77.-(2) WITHOUT LIMITING THE GENERALITY OF SUBSECTION 1, THE BOARD HAS POWER,

...

(c) TO ACCEPT SUCH ORAL OR WRITTEN EVIDENCE AS IT IN ITS DISCRETION DEEMS PROPER, WHETHER ADMISSIBLE IN A COURT OF LAW OR NOT.

WE RECOGNIZE THAT THE ONTARIO COURT OF APPEAL IN R. V. BARBER EX PARTE WAREHOUSEMEN & MISC. DRIVERS' UNION (1968) 2 OR 245 (CA) IN DEALING WITH A SIMILAR PROVISION OF THE LABOUR RELATIONS ACT CONCERNING THE POWERS OF A BOARD OF ARBITRATION, HAS INDICATED THAT AT LEAST BOARDS OF ARBITRATION MAY BE REQUIRED TO BE CIRCUMSPECT IN DEALING WITH EVIDENCE. WE ARE OF THE OPINION THAT THE BARBER CASE WAS DECIDED ON A COMPLETELY DIFFERENT SET OF FACTS DEALING WITH THE QUESTION OF ADMITTING EXTRINSIC EVIDENCE OF PAST PRACTICE IN THE FACE OF A COLLECTIVE AGREEMENT WHICH WAS NOT AMBIGUOUS, AND ACCORDINGLY IS NOT APPLICABLE TO THE FACTS OF THIS CASE.

11. WHILE WE RECOGNIZE THAT THERE IS A BROAD LATITUDE IN THE BOARD'S POWER TO ADMIT AND ACT UPON EVIDENCE WHICH MIGHT BE INADMISSIBLE IN A COURT OF LAW, WE ARE OF THE OPINION THAT EACH SITUATION MUST BE DEALT WITH ON ITS OWN PARTICULAR FACTS.

12. HAVING REGARD TO THE EVIDENCE AND FOR THE REASONS GIVEN WE ARE OF THE OPINION THAT THE APPLICANT HAS ACQUIRED THE RIGHTS, PRIVILEGES AND DUTIES OF THE ASSOCIATION UNDER THE LABOUR RELATIONS ACT.

280-71-U: YVON ROBICHAUD (COMPLAINANT) V. LOCAL 786 INTERNATIONAL ASSOCIATION OF BRIDGE STRUCTURAL & ORNAMENTAL IRON WORKERS (RESPONDENT).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

DECISION OF THE BOARD: JUNE 2, 1971.

1. THIS IS A COMPLAINT MADE UNDER SECTION 65 OF THE LABOUR RELATIONS ACT IN WHICH THE GRIEVOR COMPLAINS THAT ON OR ABOUT DECEMBER 2, 1970 HE WAS DEALT WITH BY THE BUSINESS AGENT OF THE RESPONDENT, ONE JAMES TYE, CONTRARY TO SECTION 51A OF THE LABOUR RELATIONS ACT IN THAT TYE REFUSED TO PROCESS A GRIEVANCE FILED BY THE GRIEVOR.
2. THE COMPLAINT WAS FILED ON APRIL 8, 1971, FOLLOWING WHICH A FIELD OFFICER WAS APPOINTED ON APRIL 13, 1971 TO INQUIRE INTO THE COMPLAINT AND TO REPORT TO THE BOARD. THE BOARD HAS NOW HAD AN OPPORTUNITY TO CONSIDER THE REPORT OF THE FIELD OFFICER. IT IS CLEAR FROM THE STATEMENT OF THE GRIEVOR THAT HE WAS ADVISED BY THE UNION EARLY IN JANUARY THAT THERE WAS NOTHING THE UNION COULD DO ABOUT THE GRIEVANCE WHICH HE HAD FILED.
3. ASSUMING, BUT WITHOUT IN ANY WAY DECIDING, THAT THE CONDUCT OF THE UNION COMPLAINED OF WAS CONTRARY TO SECTION 51A, ANY RIGHTS WHICH THE GRIEVOR HAS UNDER SECTION 51A CAME INTO BEING PRIOR TO FEBRUARY 15, 1971, THE DATE ON WHICH SECTION 51A, AS ENACTED BY S.O. 1970 C. 85, CAME INTO FORCE. PRIOR TO THAT DATE, THE LABOUR RELATIONS ACT DID NOT IMPOSE A DUTY OF FAIR REPRESENTATION ON A TRADE UNION. THERE SEEMS LITTLE DOUBT SECTION 51A CREATES A SUBSTANTIVE RIGHT FOR EMPLOYEES CORRELATIVE TO THE DUTY OF FAIR REPRESENTATION IMPOSED ON THE TRADE UNION. IN OUR VIEW, SECTION 51A, MUST BE CHARACTERIZED AS A SUBSTANTIVE ENACTMENT AND NOT MERELY A PROCEDURAL ONE.
4. STATUTES ARE NORMALLY CONSTRUED TO HAVE PROSPECTIVE OPERATION ONLY. THE LAW IN THIS REGARD IS WELL STATED IN MAXWELL ON INTERPRETATION OF STATUTES (12TH ED.) AT P. 215:

IT IS A FUNDAMENTAL RULE OF ENGLISH LAW THAT NO STATUTE SHOULD BE CONSTRUED TO HAVE A RETROSPECTIVE OPERATION UNLESS SUCH A CONSTRUCTION APPEARS VERY CLEARLY IN THE TERMS OF THE ACT, OR ARISES BY NECESSARY AND DISTINCT IMPLICATION.

ONE OF THE NOTABLE EXCEPTIONS TO THE RULE AGAINST RETROSPECTIVE CONSTRUCTION RELATES TO PROCEDURAL ACTS WHICH ARE USUALLY CONSTRUED TO

OPERATE RETROSPECTIVELY. SEE UPPER CANADA COLLEGE V. SMITH, (1921) 61 SCR 413, (1921) 1 W.O.R. 1154, 57 D.L.R. 648; RE GAGE (1961) 28 D.L.R. (2d) 469 AT 474; AND INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 115 V. KAISER RESOURCES LTD., 71 CLLC PAR. 14,079.

5. AS NOTED ABOVE, IT IS OUR VIEW THAT SECTION 51A IS NOT A PROCEDURAL ENACTMENT. FURTHERMORE, THERE IS NOTHING IN THE SECTION ITSELF, EITHER IN ITS OWN TERMS OR WHEN VIEWED IN THE OVER-ALL SCHEME OF THE LABOUR RELATIONS ACT, WHICH SUGGESTS THAT IT SHOULD BE GIVEN A RETROSPECTIVE OPERATION.

6. IN THESE CIRCUMSTANCES, THERE WAS NO DUTY OF FAIR REPRESENTATION IMPOSED BY THE SECTION ON THE RESPONDENT IN THIS CASE IN DECEMBER, 1970 OR JANUARY, 1971. THUS, IT CANNOT BE SAID, AS ALLEGED BY THE GRIEVOR IN HIS COMPLAINT, THAT HE HAS BEEN DEALT WITH BY THE RESPONDENT CONTRARY TO SECTION 51A.

7. HAVING REGARD TO THE ABOVE CONSIDERATIONS, THE BOARD IS OF THE OPINION THAT THE COMPLAINANT DOES NOT MAKE OUT A PRIMA FACIE CASE FOR THE REMEDY REQUESTED WITHIN THE MEANING OF SECTION 46(1) OF THE BOARD'S RULES OF PROCEDURE AND THE COMPLAINT IS THEREFORE DISMISSED.

309-71-R: LABORERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 749 (APPLICANT) V. CAPRI CONSTRUCTION COMPANY (RESPONDENT).

BEFORE: R.A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS E. BOYER AND F.W. MURRAY.

DECISION OF THE BOARD: JUNE 3, 1971.

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2. THE APPLICANT FILED THREE DOCUMENTS ENTITLED "MEMBERSHIP CARD". ON THE ONE SIDE OF THESE DOCUMENTS THERE APPEARS THE NAME "LABORERS' INTERNATIONAL UNION OF NORTH AMERICA", ITS SYMBOL, ADDRESS, AND THE NAMES AND TITLES OF TWO OF ITS OFFICERS AND A STATEMENT THAT "THIS CARD IS NOT TRANSFERABLE" TOGETHER WITH ADDITIONAL STATEMENTS CONCERNING THE PAYMENT OF DUES. ON THE REVERSE SIDE OF THESE DOCUMENTS THERE APPEARS CERTAIN INFORMATION WHICH HAS BEEN TYPED THEREON, NAMELY, "NAME", "ADMISSION DATE", "LOCAL NO.", "MEMBER NO.". THERE ALSO APPEARS ON THE REVERSE SIDE OF THESE DOCUMENTS THE PRINTED WORDING "SECRETARY-TREASURER", "LOCAL UNION ADDRESS", "MEMBERS SIGNATURE" AND "HOME ADDRESS" TOGETHER WITH THE HANDWRITTEN SIGNATURES AND ADDRESSES IN THE SPACES SO PROVIDED. ALSO APPEARING ON THE REVERSE SIDE OF THESE DOCUMENTS ARE SPACES FOR EACH MONTH OF

THE YEARS 1971 AND 1972. ON TWO OF THESE DOCUMENTS THE SPACES FOR JANUARY, FEBRUARY, MARCH AND APRIL OF 1971 HAVE BEEN INK-STAMPED WITH WHAT APPEARS TO BE THE SYMBOL OF THE LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA. THE THIRD DOCUMENT HAS BEEN SIMILARLY INK-STAMPED FOR THE MONTHS OF JANUARY, FEBRUARY, MARCH, APRIL AND MAY OF 1971. IN ADDITION THE APPLICANT FILED A SEPARATE SHEET OF ITS STATIONERY NOTE-PAPER BEARING THE NAME AND ADDRESS OF THE APPLICANT TOGETHER WITH A TYPED STATEMENT, 'WE THE UNDERSIGNED ARE MEMBERS IN GOOD STANDING WITH LABORERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 749' AND FOLLOWED BY THE SIGNATURES AND MEMBERSHIP NUMBERS OF THE THREE PERSONS ON WHOSE BEHALF THE APPLICANT FILED THE THREE DOCUMENTS ENTITLED 'MEMBERSHIP CARD'. THE APPLICANT ALSO FILED A DULY COMPLETED FORM 54, DECLARATION CONCERNING MEMBERSHIP DOCUMENTS, CONSTRUCTION INDUSTRY.

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8. CERTIFICATES OF MEMBERSHIP ARE FREQUENTLY USED BY SOME TRADE UNIONS IN APPLICATIONS TO THE BOARD IN LIEU OF DUES BOOKS SIGNED BY THE MEMBERS WHICH ARE REGARDED BY THE BOARD AS THE BEST PROOF OF MEMBERSHIP IN A TRADE UNION. THE SURRENDER OF DUES BOOKS BY MEMBERS, HOWEVER, FREQUENTLY CAUSES HARDSHIP AND INCONVENIENCE TO THE MEMBER AND HIS TRADE UNION. IT IS FOR THIS REASON THAT THE BOARD HAS ACCEPTED CERTIFICATES OF MEMBERSHIP INSTEAD OF DUES BOOKS. HOWEVER, THE BOARD HAS REQUIRED THAT THESE CERTIFICATES OF MEMBERSHIP CONTAIN STATEMENTS BY THE EMPLOYEE FOR WHOM THE EVIDENCE OF MEMBERSHIP IS SUBMITTED THAT HE IS A MEMBER OF THE TRADE UNION AND THE MONTH AND YEAR FOR WHICH HIS DUES ARE PAID. THESE STATEMENTS MUST BE SIGNED BY THE EMPLOYEE AND MUST ALSO BE CERTIFIED CORRECT BY AN OFFICER OF THE TRADE UNION WHO IS IN A POSITION TO DO SO. REFERENCE IS MADE TO THE FRANK LICARI & SONS CASE, OLRB M.R. APRIL 1967, P.57, THE A. LOVISA MASONRY CONTRACTOR CASE, OLRB M.R. JULY 1970, P. 510 AND TO THE CANADIAN DREDGE & DOCK LIMITED CASE, BOARD FILE NO. 73-70-R.

9. THE MEMBERSHIP CARDS AND THE ADDITIONAL STATEMENT ON THE APPLICANT'S STATIONERY NOTE-PAPER FILED BY THE APPLICANT HAVE NOT BEEN CERTIFIED CORRECT BY AN OFFICER OF THE APPLICANT AND DO NOT UNEQUIVOCALLY INDICATE THAT MEMBERSHIP DUES IN ANY GIVEN AMOUNT HAVE BEEN PAID. THESE MEMBERSHIP CARDS DO NOT MEET THE BOARD'S REQUIREMENTS RESPECTING CERTIFICATES OF MEMBERSHIP. HOWEVER, IN ALL THE CIRCUMSTANCES, THE BOARD IS OF THE OPINION THAT THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE IS APPROPRIATE.

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13. THE MATTER IS REFERRED TO THE REGISTRAR.

225-71-M: HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION LOCAL 197 (TRADE UNION) v. WENTWORTH ARMS HOTEL LIMITED (EMPLOYER).

- AND -

226-71-M: HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION LOCAL 197 (TRADE UNION) v. TERMINAL HOTEL (EMPLOYER).

- AND -

227-71-M: HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION LOCAL 197 (TRADE UNION) v. KENILWORTH HOUSE (EMPLOYER).

- AND -

228-71-M: HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION LOCAL 197 (TRADE UNION) v. GRAND HOUSE LIMITED (EMPLOYER).

- AND -

229-71-M: HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION LOCAL 197 (TRADE UNION) v. HOMESIDE HOUSE (EMPLOYER).

- AND -

230-71-M: HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION LOCAL 197 (TRADE UNION) v. CARLTON HOUSE (EMPLOYER).

- AND -

231-71-M: HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION LOCAL 197 (TRADE UNION) v. MODJESKA HOUSE LIMITED (EMPLOYER).

- AND -

232-71-M: HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION LOCAL 197 (TRADE UNION) v. COLONIAL PUBLIC HOUSE (EMPLOYER).

- AND -

233-71-M: HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION LOCAL 197 (TRADE UNION) v. WESTDALE HOTEL (EMPLOYER).

- AND -

234-71-M: HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION LOCAL 197 (TRADE UNION) v. PICADILLY HOUSE (EMPLOYER).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND J. E. C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: IAN SCOTT, BILL ADAMS AND TERRY HOWE FOR THE TRADE UNION; E. L. STRINGER, Q.C., GEORGE THOMAS AND JOHN MYKYP-SHYN FOR THE EMPLOYER.

DECISION OF VICE-CHAIRMAN RORY F. EGAN AND BOARD MEMBER J. E. C. ROBINSON, Q.C.:
JUNE 7, 1971.

1. THE BOARD DIRECTS THAT THE ABOVE APPLICATIONS BE AND THEY ARE HEREBY CONSOLIDATED.

2. THE MINISTER OF LABOUR HAS REFERRED TO THE BOARD, PURSUANT TO SECTION 79A OF THE LABOUR RELATIONS ACT, THE QUESTION AS TO WHETHER HE HAD THE AUTHORITY UNDER SUBSECTION 4 OF SECTION 34 OF THE ACT TO APPOINT A NOMINEE FOR THE TRADE UNION ON A BOARD OF ARBITRATION.

3. AT THE COMMENCEMENT OF THE HEARING, COUNSEL FOR THE TRADE UNION STATED THAT ONE QUESTION WHICH WOULD ARISE BEFORE THE BOARD DURING THE COURSE OF THESE PROCEEDINGS WOULD BE AS TO WHETHER A COLLECTIVE AGREEMENT WAS IN EXISTENCE AT THE MATERIAL TIME. HE SAID THAT TO ESTABLISH HIS POSITION IN THE EVENT THAT THERE SHOULD BE FURTHER PROCEEDINGS, HE WISHED TO INDICATE TO THE BOARD THAT HIS CLIENT APPEARED WITHOUT RECOGNIZING THAT THE BOARD HAS ANY RIGHT TO DETERMINE WHETHER A COLLECTIVE AGREEMENT EXISTS. HE SUBMITTED THAT THE BOARD MAY NOT HAVE THIS POWER AND SAID HE RESERVED HIS RIGHTS ON THIS ASPECT OF THE CASE.

4. WITH RESPECT TO THE OBJECTION OF THE TRADE UNION, THE BOARD IS OF THE OPINION THAT IT WAS JURISDICTION TO DECIDE THE QUESTION AS TO WHETHER A COLLECTIVE AGREEMENT EXISTS. IN ADDITION TO SECTION 79 OF THE ACT WHICH SETS OUT THE JURISDICTION OF THE BOARD, IN TERMS COMPREHENSIVE ENOUGH TO COVER THE MATTER, THE ACT CONTAINS A NUMBER OF OTHER SECTIONS WHICH DEAL WITH SITUATIONS WHERE THE EXISTENCE OR NON-EXISTENCE OF A COLLECTIVE AGREEMENT AFFECTS THEIR OPERATION AND WHERE, CONSEQUENTLY, A FINDING HAS TO BE MADE BY THE BOARD ON THE VERY POINT RAISED IN THE TRADE UNION'S OBJECTION HERE.

5. THE TRADE UNION AND THE EMPLOYER HAD ENTERED INTO A COLLECTIVE AGREEMENT IN 1968. ARTICLE 13 OF THE AGREEMENT DEALS WITH ITS DURATION AND IS IN THE FOLLOWING TERMS:

"ARTICLE 13 - DURATION AND TERMINATION OR MODIFICATION

13.01 THIS AGREEMENT SHALL BECOME EFFECTIVE ON THE 1ST DAY OF DECEMBER, 1968, AND SHALL REMAIN IN FULL FORCE AND EFFECT UNTIL THE 30TH DAY OF NOVEMBER, 1970, AND SHALL CONTINUE IN EFFECT FROM YEAR TO YEAR THEREAFTER UNLESS EITHER PARTY SHALL GIVE WRITTEN NOTICE NOT MORE THAN SIXTY (60) DAYS AND NOT LESS THAN THIRTY (30) DAYS BEFORE THE DATE OF ITS TERMINATION OF ITS DESIRE TO AMEND THE AGREEMENT.

13.02 THIS AGREEMENT REMAINS IN EFFECT UNTIL A NEW AGREEMENT HAS BEEN NEGOTIATED AND SIGNED, BUT WHEN THE NEW AGREEMENT HAS BEEN SIGNED THIS AGREEMENT BECOMES NULL AND VOID."

6. IN ACCORDANCE WITH THE TERMS OF THE AGREEMENT, NOTICE OF DESIRE TO BARGAIN WAS TENDERED TO THE EMPLOYER BY THE TRADE UNION. NO AGREEMENT WAS REACHED AND CONCILIATION WAS SOUGHT.

7. THE PROCESSES OF CONCILIATION WERE FOLLOWED AND IN DUE COURSE RESULTED IN NOTICE FROM THE MINISTER OF LABOUR THAT NO BOARD OF CONCILIATION WOULD BE APPOINTED.

8. IN ALL INSTANCES THE EMPLOYEES WENT ON STRIKE. THE STRIKES DID NOT COMMENCE UNTIL 14 DAYS HAD ELAPSED AFTER THE MINISTER HAD RELEASED TO THE PARTIES THE NOTICE THAT HE DID NOT DEEM IT ADVISABLE TO APPOINT A CONCILIATION BOARD. BEFORE THE DATE OF THE HEARING OF THIS MATTER, THE STRIKES HAD CEASED AND NEW COLLECTIVE AGREEMENTS HAD BEEN SIGNED BY A NUMBER OF EMPLOYERS.

9. THE EMPLOYER FILED A GRIEVANCE ALLEGING THAT THE TRADE UNION WAS IN VIOLATION OF ARTICLE 5 OF THE COLLECTIVE AGREEMENT WHICH PROHIBITS A STRIKE OR A LOCKOUT DURING THE TERM OF THE AGREEMENT. THE TRADE UNION DECLINED TO ACCEPT THE GRIEVANCE WHEREUPON THE EMPLOYER ADVISED THE UNION THAT IT PROPOSED TO PROCEED TO ARBITRATION. THE EMPLOYER NOTIFIED THE TRADE UNION OF THE NAME OF ITS NOMINEE TO THE BOARD AND REQUESTED THE UNION TO APPOINT ITS NOMINEE.

10. THE UNION FAILED TO APPOINT A NOMINEE AND THE EMPLOYER APPLIED TO THE MINISTER ADVISING HIM THAT THE UNION HAD NOT APPOINTED A NOMINEE AND REQUESTING HIM TO APPOINT A CHAIRMAN "IN ACCORDANCE WITH THE TERMS OF THE COLLECTIVE AGREEMENT." A COPY OF THE AGREEMENT WAS ENCLOSED.

11. THE TRADE UNION RECEIVED A COPY OF THE EMPLOYER'S LETTER TO THE MINISTER. IT ADVISED THE MINISTER THAT ITS POSITION WAS THAT THE MINISTER HAS NO AUTHORITY UNDER THE LABOUR RELATIONS ACT OR OTHERWISE TO MAKE THE APPOINTMENT REQUESTED. THE TRADE UNION SUBMITTED TO THE MINISTER THAT HIS POWER TO APPOINT WAS DEPENDENT, UNDER SECTION 34(4) UPON THE EXISTENCE OF A COLLECTIVE AGREEMENT. SECTION 34(4) READS:

"(4) NOTWITHSTANDING SUBSECTION 3, IF THERE IS FAILURE TO APPOINT AN ARBITRATOR OR TO CONSTITUTE A BOARD OF ARBITRATION UNDER A COLLECTIVE AGREEMENT, THE MINISTER, UPON THE REQUEST OF EITHER PARTY, MAY APPOINT THE ARBITRATOR OR MAKE SUCH APPOINTMENTS AS ARE NECESSARY TO CONSTITUTE THE BOARD OF ARBITRATION, AS THE CASE MAY BE, AND ANY PERSON SO APPOINTED BY THE MINISTER SHALL BE DEEMED TO HAVE BEEN APPOINTED IN ACCORDANCE WITH THE COLLECTIVE AGREEMENT. R.S.O. 1960, c. 202, s. 34(3-4)."

12. THE UNION SUBMITTED THAT NO COLLECTIVE AGREEMENT WAS IN FORCE AT THE TIME OF THE EMPLOYER'S APPLICATION TO THE MINISTER AS REQUIRED BY SECTION 34(4) AND THAT CONSEQUENTLY THE MINISTER WAS WITHOUT POWER TO APPOINT.

13. THE MINISTER THEN REFERRED THE MATTER TO THE BOARD.

14. COUNSEL FOR THE EMPLOYER RELIED UPON ARTICLE 13.02 OF THE

COLLECTIVE AGREEMENT AND THE PROVISIONS OF SECTION 39(2) OF THE LABOUR RELATIONS ACT AS SUPPORTING HIS POSITION THAT THE AGREEMENT WAS IN FORCE AT ALL MATERIAL TIMES. SECTION 39(2) OF THE LABOUR RELATIONS ACT PROVIDES:

"(2) NOTWITHSTANDING SUBSECTION 1, THE PARTIES MAY, BEFORE OR AFTER A COLLECTIVE AGREEMENT HAS CEASED TO OPERATE, AGREE TO CONTINUE ITS OPERATION OR ANY OF ITS PROVISIONS FOR A PERIOD OF LESS THAN ONE YEAR WHILE THEY ARE BARGAINING FOR ITS RENEWAL, WITH OR WITHOUT MODIFICATIONS OR FOR A NEW AGREEMENT, BUT SUCH CONTINUED OPERATION DOES NOT BAR AN APPLICATION FOR CERTIFICATION OR FOR A DECLARATION THAT THE TRADE UNION NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT."

15. IN THE SUBMISSION OF COUNSEL FOR THE TRADE UNION, ARTICLE 13.02 OF THE AGREEMENT WAS DESIGNED TO CONTINUE THE FORCE OF THE AGREEMENT DURING NEGOTIATIONS BUT THAT IT WAS VOID BECAUSE IT EXCEEDED THE TIME LIMITS FIXED IN 39.02 OF THE LABOUR RELATIONS ACT AND IN FACT HAD NO TIME LIMITS WHATSOEVER.

16. IN OUR OPINION, ARTICLE 13.02 EMBODIES THE INTENT OF THE PARTIES TO TAKE ADVANTAGE OF THE PROVISIONS OF SECTION 39(2) OF THE ACT AND TO EXTEND THE COVERAGE OF THE AGREEMENT UNTIL A NEW AGREEMENT WAS NEGOTIATED AND SIGNED. THE INTENT IS EMPHASIZED BY THE SOMEWHAT REDUNDANT STIPULATION THAT WHEN THE NEW AGREEMENT HAS BEEN SIGNED, THE EXISTING AGREEMENT BECOMES NULL AND VOID.

17. IN THE NIAGARA SOUTH BOARD OF EDUCATION CASE (BOARD FILE No. 322-71-U) THE BOARD FOUND THAT THE ABSENCE OF A STATED PERIOD OF EXTENSION IN AN EXTENSION CLAUSE DOES NOT CAUSE IT TO BE IN VIOLATION OF NOR RENDER IT INVALID UNDER THE PROVISIONS OF SECTION 39(2) OF THE ACT. FOLLOWING THE REASONS SET OUT IN THE FOREGOING CASE, WE FIND THAT ARTICLE 13.02 OF THE COLLECTIVE AGREEMENT IS VALID AND WOULD REMAIN IN FORCE UNTIL A NEW AGREEMENT WAS REACHED OR THE TIME LIMITS UNDER SECTION 39(2) OF THE ACT EXPIRED, WHICHEVER FIRST OCCURRED. NONE OF THESE EVENTS HAD TRANSPIRED AT THE TIME THE REQUEST WAS MADE TO THE MINISTER AND THE AGREEMENT WAS THEREFORE IN EFFECT AT THAT TIME.

18. IN THE RESULT, THEREFORE, THE ANSWER TO THE QUESTION POSED BY THE MINISTER IS "YES".

DECISION OF BOARD MEMBER O. HODGES: JUNE 7, 1971.

1. MY REASONS FOR DISSENT IN THE NIAGARA BOARD OF EDUCATION

CASE (BOARD FILE NO. 322-71-U) ARE APPLICABLE IN THIS CASE, AND ON THOSE GROUNDS I WOULD HAVE DISMISSED AN APPLICATION UNDER S. 67 "UNLAWFUL STRIKES AND LOCK-OUTS" IN THE INSTANT CASE AS WELL. HOWEVER, THE EARLIER CASE WAS DECIDED IN THE AFFIRMATIVE BY MY COLLEAGUES IN THE MAJORITY. IN THAT MATTER, THEIR DECISION WAS THAT A COLLECTIVE AGREEMENT WAS IN EXISTENCE AT THE MATERIAL TIME AS A RESULT OF THE INDEFINITE TERM OF EXTENSION INCORPORATED IN THE ORIGINAL COLLECTIVE AGREEMENT.

2. WHILE THERE WAS OR IS A COLLECTIVE AGREEMENT IN EXISTENCE AT THE MATERIAL TIMES IN THIS CASE, I MAINTAIN THAT A STRIKE DURING THE PERIOD FOLLOWING THE EXPIRATION OF THE TIME REQUIRED BY S. 54 IS NOT UNLAWFUL AND ARBITRATION SHOULD NOT BE AVAILABLE FOR THE PURPOSE OF PROCEEDING AGAINST THE UNION, ITS OFFICERS OR MEMBERS IN THESE CIRCUMSTANCES.

3. THE MINISTER HAS THE AUTHORITY TO MAKE AN APPOINTMENT AS SOUGHT BY THE RESPONDENT EMPLOYERS, AND THAT IS THE ONLY QUESTION TO BE DECIDED HERE. THE EXERCISE OF THE AUTHORITY TO MAKE SUCH APPOINTMENT IS, OF COURSE, SOLELY WITHIN THE POWER OF THE MINISTER UNDER S. 79A OF THE ACT.

213-71-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. McKELLAR GENERAL HOSPITAL (RESPONDENT) v. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL NO. 865 (INTERVENER #1) v. OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION LOCAL 81 (INTERVENER #2) v. BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION A.F. OF L. - C.I.O. - C.L.C. LOCAL 268 (INTERVENER #3).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS O. HODGES AND J.E.C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: W. A. ACTON FOR THE APPLICANT, J. B. NOONAN FOR THE RESPONDENT, NO ONE FOR INTERVENER #1, NO ONE FOR INTERVENER #2, NO ONE FOR INTERVENER #3.

DECISION OF THE BOARD: JUNE 8, 1971.

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2. THE APPLICANT IN ITS APPLICATION IS APPLYING FOR CERTIFICATION AS BARGAINING AGENT FOR A "TAG-END" UNIT OF EMPLOYEES OF THE RESPONDENT. MORE SPECIFICALLY, THE APPLICANT IN ITS APPLICATION IS APPLYING FOR A UNIT COMPOSED OF ALL EMPLOYEES OF THE RESPONDENT AT THUNDER BAY, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSES,

UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL STAFF, SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR, AND PERSONS COVERED BY SUBSISTING COLLECTIVE AGREEMENTS IN EFFECT BETWEEN THE RESPONDENT AND THE THREE INTERVENER TRADE UNIONS.

3. THE RESPONDENT IN ITS COLLECTIVE AGREEMENT WITH INTERVENER #1 RECOGNIZES THE SAID TRADE UNION AS BARGAINING AGENT FOR ALL MAINTENANCE MECHANICS, MAINTENANCE ELECTRICIANS, STATIONARY ENGINEERS, FOREMEN, APPRENTICES AND HELPERS, SAVE AND EXCEPT CHIEF ENGINEER. IN ITS AGREEMENT WITH INTERVENER #2, THE RESPONDENT RECOGNIZES THE SAID UNION AS BARGAINING AGENT FOR ALL OFFICE AND CLERICAL EMPLOYEES, SAVE AND EXCEPT CERTAIN SPECIFIED EXCLUSIONS OF PERSONS EXERCISING MANAGERIAL FUNCTIONS AND PERSONS EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS. THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND INTERVENER #3 LISTS IN AN ATTACHED SCHEDULE THOSE JOB CLASSIFICATIONS REPRESENTED BY INTERVENER #3 WHICH ARE LISTED BELOW:

DIETARY HELP	SECOND COOK
HOUSEKEEPING AIDE	PORTERS
ELEVATOR OPERATORS	KITCHEN PORTERS
MESSENGERS	CLEANERS (MALE)
LAUNDRY HELP (FEMALE)	ASSISTANT WASHER
PRESSER	HANDYMAN
SEAMSTRESS	WASHER
NURSE'S AIDES	FIRST COOK
C.S.R. OPERATORS	BAKER
COOK'S ASSISTANT	ORDERLIES UNTRAINED
HOUSEBOYS	ORDERLIES TRAINED
PASTRY COOK	MAINTENANCE MAN
THIRD COOK	

THE ABOVE JOB CLASSIFICATIONS ARE THOSE (AMONG OTHERS) WHICH ARE INCLUDED IN "ALL EMPLOYEE" HOSPITAL UNITS WHICH THE BOARD HAS FOUND TO BE APPROPRIATE FOR COLLECTIVE BARGAINING. FURTHER, THE EXCLUSIONS FROM THE "TAG-END" UNIT PROPOSED BY THE APPLICANT IN ITS APPLICATION ARE THE CLASSIFICATIONS WHICH ARE REGULARLY EXCLUDED FROM THE "ALL EMPLOYEE" HOSPITAL UNIT.

4. THE BARGAINING UNIT WHICH THE RESPONDENT CLAIMED IN ITS REPLY AND AT THE BOARD HEARING OF THE APPLICATION TO BE APPROPRIATE FOR COLLECTIVE BARGAINING IS A UNIT COMPOSED EXCLUSIVELY OF REGISTERED NURSING ASSISTANTS IN THE EMPLOY OF THE RESPONDENT. AT THE HEARING, THE REPRESENTATIVE OF THE APPLICANT ADVISED THE BOARD THAT THE APPLICANT WAS IN AGREEMENT WITH THE UNIT PROPOSED BY THE RESPONDENT. THE BOARD THEREUPON INQUIRED OF COUNSEL FOR THE RESPONDENT AS TO WHICH OF

THE RESPONDENT'S EMPLOYEES, IF ANY, WERE NOT REPRESENTED BY A TRADE UNION (OTHER THAN PERSONS EXERCISING MANAGERIAL FUNCTIONS OR EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS). COUNSEL FOR THE RESPONDENT ADVISED THE BOARD AT THE HEARING (AND SUBSEQUENTLY IN WRITING) THAT PERSONS IN THE CLASSIFICATIONS OF PHARMACY CLERK, STORES CLERK, HOUSEMOTHER, LABORATORY AIDE, AND TECHNICAL STAFF WERE NOT REPRESENTED IN COLLECTIVE BARGAINING BY ANY TRADE UNION.

5. COUNSEL FOR THE RESPONDENT SUBMITTED THAT PERSONS IN THE FIRST FOUR OF THE ABOVE CLASSIFICATIONS, BY REASON OF THEIR COMMUNITY OF INTEREST, WERE MORE APPROPRIATE FOR INCLUSION IN THE "ALL EMPLOYEE" BARGAINING UNIT REPRESENTED BY INTERVENER #3 THAN IN A UNIT WITH REGISTERED NURSING ASSISTANTS. COUNSEL ALTERNATIVELY SUBMITTED THAT IF THE BOARD REJECTED THE AGREEMENT OF THE PARTIES TO A UNIT COMPOSED EXCLUSIVELY OF REGISTERED NURSING ASSISTANTS AND FOUND A "TAG-END" TO BE THE ONLY APPROPRIATE UNIT, TECHNICAL STAFF SHOULD NOT BE INCLUDED IN SUCH A UNIT. THE REPRESENTATIVE OF THE APPLICANT AGREED WITH THIS SUBMISSION. COUNSEL UNDERTOOK AND SUBSEQUENTLY PROVIDED THE BOARD WITH A LIST OF THOSE PERSONS AND CLASSIFICATIONS THAT THE RESPONDENT CONSIDERED AS FALLING WITHIN THE DESIGNATION OF TECHNICAL STAFF. THE CLASSIFICATION ARE AS FOLLOWS:

MEDICAL TECHNOLOGIST (REG.)	RADIOLOGICAL TECHNICIAN (REG.)
MEDICAL TECHNOLOGIST (NON-REG.)	RADIOLOGICAL TECHNICIAN (NON-REG.)
ANATOMICAL PATHOLOGICAL TECHNICIAN	PHYSIOTHERAPIST
CYTOTECHNOLOGIST	DARKROOM ATTENDANT
RADIOISOTOPE TECHNICIAN	MAINTENANCE EXPEDITER
LABORATORY ASSISTANT	PROCEDURES ASSISTANT

THE REPRESENTATIVE OF THE APPLICANT AGREES WITH THE RESPONDENT THAT ALL OF THE ABOVE DESIGNATED CLASSIFICATIONS ARE TECHNICAL STAFF.

6. IT MAY BE THAT PHARMACY CLERKS, STORES CLERKS, HOUSEMOTHERS AND LABORATORY AIDES HAVE A GREATER COMMUNITY OF INTEREST WITH THE EMPLOYEES IN THE BARGAINING UNIT REPRESENTED BY INTERVENER #3 THAN WITH THE REGISTERED NURSING ASSISTANTS IN THE EMPLOY OF THE RESPONDENT. BE THAT AS IT MAY, THE FACT REMAINS THAT INTERVENER #3 HAS NOT ACQUIRED THE BARGAINING RIGHTS FOR THE EMPLOYEES IN THOSE FOUR CLASSIFICATIONS. ACCORDINGLY, THE FACT OF ANY COMMUNITY OF INTEREST WHICH THE SAID EMPLOYEES MAY HAVE WITH THOSE EMPLOYEES ALREADY REPRESENTED BY INTERVENER #3 IS NO IMPEDIMENT TO THE INSTANT APPLICATION.

7. THE BOARD HAS NOTED IN EARLIER DECISIONS THAT REGISTERED NURSING ASSISTANTS HAVE A LONG HISTORY OF BEING INCLUDED IN "ALL EMPLOYEE" HOSPITAL UNITS AND, MOREOVER, THAT THEY HAVE A COMMUNITY OF INTEREST WITH EMPLOYEES IN OTHER CLASSIFICATIONS IN SUCH UNITS, I.E., NURSES' AIDES AND ORDERLIES, IN THAT THEY ARE ALL CONCERNED WITH

DIRECT NURSING CARE. FOR THESE REASONS, THE BOARD IN THE PAST HAS CONSISTENTLY REFUSED TO GRANT A CERTIFICATE FOR A UNIT CONFINED SOLELY TO REGISTERED NURSING ASSISTANTS. RATHER, THE BOARD INVARIABLY HAS FOUND REGISTERED NURSING ASSISTANTS TO BE APPROPRIATE FOR INCLUSION IN "ALL EMPLOYEE" HOSPITAL UNITS, EVEN IN THE FACE OF AN AGREEMENT BY THE PARTIES CONCERNED TO EXCLUDE THEM FROM SUCH A UNIT. (SEE THE BOARD OF HEALTH OF THE YORK COUNTY HEALTH UNIT CASE OLRB M.R. APRIL 1967 P. 62; ESSEX HEALTH ASSOCIATION CASE OLRB M.R. NOVEMBER 1967 P. 716; ST. JOSEPH'S GENERAL HOSPITAL CASE OLRB M.R. SEPTEMBER 1968 P. 558; RIVERSIDE HOSPITAL OF OTTAWA CASE OLRB M.R. JANUARY 1971 P. 10).

8. HAVING CONSIDERED THE REPRESENTATIONS OF THE APPLICANT AND THE RESPONDENT, WE ARE NOT PERSUADED THAT THERE ARE ANY SPECIAL CIRCUMSTANCES IN THE INSTANT CASE TO CAUSE THE BOARD TO DEPART FROM ITS PAST DECISIONS. WE THEREFORE ARE NOT PREPARED AT THIS TIME TO FIND A UNIT COMPOSED SOLELY OF REGISTERED NURSING ASSISTANTS AS BEING APPROPRIATE FOR COLLECTIVE BARGAINING, NOTWITHSTANDING THE AGREEMENT OF THE APPLICANT AND THE RESPONDENT. RATHER, WE FIND THAT THE ONLY APPROPRIATE UNIT IS A "TAG-END" UNIT. THE BOARD, IN ITS PREVIOUS DETERMINATIONS, HAS ALWAYS EXCLUDED TECHNICAL STAFF FROM "ALL EMPLOYEE" HOSPITAL UNITS. THIS BEING THE CASE, IT WOULD BE INCONSISTENT FOR THE BOARD TO INCLUDE TECHNICAL STAFF IN A UNIT WHICH IS A "TAG-END" TO AN "ALL EMPLOYEE" HOSPITAL UNIT. AS WAS NOTED ABOVE, THE APPLICANT AND THE RESPONDENT ARE IN AGREEMENT THAT TECHNICAL STAFF SHOULD NOT BE INCLUDED IN SUCH A "TAG-END" UNIT.

9. THE BOARD ACCORDINGLY FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT THUNDER BAY, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL STAFF, SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR, PERSONS COVERED BY SUBSISTING COLLECTIVE AGREEMENTS BETWEEN THE RESPONDENT AND THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 865, THE RESPONDENT AND OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION LOCAL 81, AND THE RESPONDENT AND BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

10. THE NUMBER OF PERSONS ON THE RESPONDENT'S LIST WHO ARE INCLUDED IN THE ABOVE DESCRIBED BARGAINING UNIT FOR PURPOSES OF THE COUNT TOTALS 128. THE APPLICANT HAS FILED EVIDENCE OF MEMBERSHIP FOR 82 PERSONS WHOSE NAMES CORRESPOND TO THOSE APPEARING ON THE SAID LIST. THE BOARD ACCORDINGLY IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN THIRTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON APRIL 16, 1971,

THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

11. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

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13. THE MATTER IS REFERRED TO THE REGISTRAR.

35-70-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE REGIONAL MUNICIPALITY OF YORK (RESPONDENT).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F.W. MURRAY.

APPEARANCES AT THE HEARING: W.A. ACTON AND JACK BIRD FOR THE APPLICANT; EDWARD OAKES FOR THE RESPONDENT.

DECISION OF THE BOARD: JUNE 1, 1971.

1. IN THIS CASE THE APPLICANT HAS MADE APPLICATION FOR A BARGAINING UNIT OF EMPLOYEES OF THE RESPONDENT EMPLOYED IN THE SURVEY SECTION OF ITS ENGINEERING DEPARTMENT WITH CERTAIN EXCEPTIONS THAT ARE NOT HERE MATERIAL.

2. THE RESPONDENT EMPLOYS APPROXIMATELY 121 PEOPLE IN THE ENGINEERING DEPARTMENT. THAT DEPARTMENT IS DIVIDED UP INTO AN ADMINISTRATION BRANCH, A PROPERTY BRANCH, A PLANNING AND DESIGN BRANCH, A CONSTRUCTION BRANCH, A MAINTENANCE BRANCH AND A TRAFFIC BRANCH. EACH OF THESE BRANCHES HAS ITS OWN PARTICULAR FUNCTION. THE SURVEY SECTION GENERALLY OBTAINS INFORMATION FROM THE FIELD REQUIRED FOR THE DESIGN AND CONSTRUCTION OF REGIONAL WORKS AND RECORDS CERTAIN INFORMATION WITH RESPECT TO SUCH WORKS. PRIOR TO CONSTRUCTION THE EMPLOYEES TAKE LEVELS AND RECORD THE POSITION OF TREES, CULVERTS, UTILITIES, HOUSES AND STRUCTURES WITHIN THE LIMITS OF THE WORK AND ABUTTING THERETO; DURING CONSTRUCTION THE SURVEY SECTION LAYS OUT GRADES AND LINES FOR CONSTRUCTION WORK AND TAKES GRADES TO PERMIT THE CALCULATION OF QUANTITIES AND AFTER CONSTRUCTION IT ESTABLISHES THE GRADES OF THE WORK INVOLVED. THERE IS A SUPERVISOR OF SURVEYS WHO IS RESPONSIBLE FOR

ASSIGNING WORK TO EACH PARTY AND THERE ARE FOUR PARTY CHIEFS, THREE INSTRUMENTMEN, EIGHT RODMEN WHO ARE RESPONSIBLE FOR ACTUALLY DOING THE WORK ASSIGNED BY THE SUPERVISOR OF SURVEYS AND CHAINMEN.

3. THE WORK OF THE SURVEY SECTION TAKES 70% OF THE TIME OF THE EMPLOYEES, BUT IN ADDITION THE EMPLOYEES PERFORM OTHER UNRELATED DUTIES AT TIMES WHEN THEY ARE NOT WORKING ON SURVEYS WHICH INCLUDES TAKING TRAFFIC COUNTS, ASSISTING IN ROAD MAINTENANCE, CARPENTRY WORK, DRAFTING, VEHICLE MAINTENANCE, CLERICAL DUTIES RELATING TO CONTRACTS AND PAVEMENT MARKINGS. EMPLOYEES IN THE SURVEY SECTION WORK A FORTY-HOUR WEEK WHICH IS THE SAME AS THE NUMBER OF HOURS WORKED BY OTHER EMPLOYEES IN THE ENGINEERING DEPARTMENT WITH THE EXCEPTION OF THOSE IN THE MAINTENANCE BRANCH. THE QUALIFICATIONS FOR EMPLOYMENT OF MEMBERS OF THE SURVEY SECTION ARE BASICALLY THE SAME FOR THE OTHER MEMBERS OF THE CONSTRUCTION AND THE MAINTENANCE BRANCH IN THE ENGINEERING DEPARTMENT AND OPPORTUNITIES FOR PROMOTION ARE AVAILABLE TO THE SURVEY SECTION WITHIN THE ENGINEERING DEPARTMENT.

4. HAVING REGARD TO THE EVIDENCE WE ARE NOT ABLE TO FIND ANY SPECIAL COMMUNITY OF INTEREST IN THE SURVEY SECTION THAT DIFFERS TO A SUBSTANTIAL DEGREE FROM OTHER EMPLOYEES IN THE ENGINEERING DEPARTMENT. CERTAINLY, THERE IS NO GREATER DIVERSITY OF INTEREST AMONG VARIOUS EMPLOYEES IN THE ENGINEERING DEPARTMENT THAN EXISTS AMONG VARIOUS CLASSIFICATIONS OF EMPLOYEES IN ANY LARGER PLANT OR OFFICE UNIT; CANADIAN UNION OF PUBLIC EMPLOYEES V. THE BOARD OF EDUCATION FOR THE BOROUGH OF NORTH YORK, DECEMBER 1970 OLRB MTHLY. REP. 915 AT 920. FURTHER TO FIND THAT THE SURVEY SECTION IS AN APPROPRIATE UNIT. IN OUR VIEW WOULD UNDULY FRAGMENT THE RESPONDENT'S EMPLOYEES.

5. WE NOTE THAT COUNSEL FOR THE RESPONDENT SUBMITTED THAT THE SURVEY SECTION SHOULD BE INCLUDED IN A BARGAINING UNIT NORMALLY REFERRED TO AS AN "OUTSIDE" UNIT AND ALSO INDICATED THAT THE SURVEY SECTION MIGHT BE INCLUDED IN A UNIT WHICH THIS BOARD HAS REFERRED TO AS AN "INSIDE" UNIT. HOWEVER, IN ARRIVING AT OUR DECISION WE ARE MAKING NO SPECIFIC FINDING AS TO WHETHER THE SURVEY SECTION SHOULD BE INCLUDED IN AN INSIDE OR AN OUTSIDE UNIT.

6. IN THE RESULT WE FIND THAT THE BARGAINING UNIT APPLIED FOR IS INAPPROPRIATE.

7. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT LESS THAN THIRTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN ANY BARGAINING UNIT WHICH THE BOARD MIGHT FIND TO BE APPROPRIATE, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON MARCH 2, 1971, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

8. THE APPLICATION IS THEREFORE DISMISSED.

176-70-M: THE INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, LOCAL 559 (TRADE UNION) v. BAUSCH AND LOMB OPTICAL COMPANY LIMITED (EMPLOYER).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND O. HODGES.

APPEARANCES AT THE HEARING: S.T. GOUDGE, GLENN PATTINSON AND AL KNIPFEL FOR THE TRADE UNION; S.R. ELLIS FOR THE EMPLOYER.

DECISION OF THE BOARD: JUNE 7, 1971.

1. THIS IS AN APPLICATION PURSUANT TO SECTION 79A OF THE LABOUR RELATIONS ACT. THE MINISTER OF LABOUR HAS REFERRED TO THE BOARD THE QUESTION AS TO WHETHER THERE IS A COLLECTIVE AGREEMENT BETWEEN THE EMPLOYER AND THE TRADE UNION.

2. IT APPEARS THAT THE PARTIES WERE NEGOTIATING FOR A FIRST COLLECTIVE AGREEMENT AND A CONCILIATION BOARD WAS ULTIMATELY ESTABLISHED. THE PARTIES MET UNDER THE AUSPICES OF THE CONCILIATION BOARD AND REACHED AGREEMENT ON WHAT PURPORTS TO BE A COLLECTIVE AGREEMENT. THE PURPORTED COLLECTIVE AGREEMENT WAS SUBJECT TO A VOTING ARRANGEMENT (EXHIBIT 1) WHICH PROVIDED INTER ALIA:

"...THIS AGREEMENT IS SUBJECT TO RATIFICATION BY ALL EMPLOYEES IN THE CERTIFIED BARGAINING UNIT, IT BEING AGREED A SECRET BALLOT VOTE WILL BE TAKEN. THE DECISION SHALL BE MADE BY A MAJORITY OF THE BALLOTS CAST."

3. THE VOTING ARRANGEMENT WAS REACHED ON SEPTEMBER 24, 1970 AND A GREAT DEAL OF TIME WAS UTILIZED IN NEGOTIATING THE PROCEDURES FOR THE VOTE. IN FACT, AT ONE STAGE NEGOTIATIONS PROVED ALMOST ABORTIVE BECAUSE THE PARTIES COULD NOT AGREE ON THE PROCEDURES FOR THE VOTE. THE VOTING ARRANGEMENT WAS REACHED ON THE MORNING OF SEPTEMBER 24, 1970 AND IMMEDIATELY THAT AFTERNOON A VOTE WAS HELD IN ACCORDANCE WITH THE PROCEDURES THAT HAD BEEN AGREED UPON. THE EMPLOYEES VOTED AGAINST ACCEPTING THE PROPOSED COLLECTIVE AGREEMENT.

4. ON NOVEMBER 11, 1970 THE UNION UNILATERALLY TOOK A SECOND VOTE AND AT THAT TIME THE PROPOSED COLLECTIVE AGREEMENT WAS RATIFIED. THIS SECOND VOTE WAS NOT HELD IN ACCORDANCE WITH THE PROCEDURES THAT HAD BEEN AGREED UPON BETWEEN THE UNION AND THE COMPANY.

5. THE COMPANY SUBMITS THAT THE PROPOSED COLLECTIVE AGREEMENT WAS CONDITIONAL UPON THE SEPTEMBER 24, 1970 VOTE, AND THAT THE EM-

EMPLOYEES HAVING FAILED TO RATIFY THE PROPOSED AGREEMENT AT THAT TIME, NO COLLECTIVE AGREEMENT CAME INTO EXISTENCE.

6. THE UNION MAINTAINS THAT THE PROPOSED COLLECTIVE AGREEMENT BECAME EFFECTIVE AS A RESULT OF THE SECOND VOTE. THE UNION SUBMITS THAT THE WORD RATIFICATION IN THE VOTING ARRANGEMENT, EXHIBIT 1, IS A SPECIAL COLLECTIVE BARGAINING TERM CONCERNING INTERNAL UNION PROCEDURES AND THAT THE TERM RATIFICATION MAY EMBRACE MORE THAN ONE VOTE. THE COMPANY IN TURN SUBMITS THAT THE VOTING ARRANGEMENT, EXHIBIT 1, WAS SPECIFICALLY NEGOTIATED AND THAT IT WAS INTENDED THAT THE REFERENCE TO "RATIFICATION BY ... A SECRET BALLOT VOTE" MEANT THE VOTE TAKEN ON SEPTEMBER 24, 1970 AND DID NOT PERMIT ANY FURTHER VOTES.

7. HAVING REGARD TO THE EVIDENCE AND TO THE SUBMISSIONS OF THE PARTIES AND IN THE PARTICULAR CIRCUMSTANCES OF THIS CASE, WE ARE SATISFIED THAT NOTWITHSTANDING THAT THE TERM RATIFICATION MAY HAVE A SPECIAL MEANING THAT IN THIS CASE WHEN THE PARTIES REFERRED TO "RATIFICATION BY ... A SECRET BALLOT VOTE" THEY CONTEMPLATED ONLY ONE VOTE AND THAT WAS THE VOTE TAKEN ON SEPTEMBER 24, 1970. ACCORDINGLY, SINCE THE CONDITION NECESSARY TO EFFECT THE PROPOSED COLLECTIVE AGREEMENT FAILED WE ARE OF THE OPINION THAT NO COLLECTIVE AGREEMENT CAME INTO EXISTENCE BETWEEN THE PARTIES.

8. IN THE RESULT WE RESPECTFULLY REPORT TO THE MINISTER OF LABOUR THAT THERE IS NO COLLECTIVE AGREEMENT BETWEEN THE TRADE UNION AND THE EMPLOYER.

438-71-R: LOCAL UNION 115, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (APPLICANT) v. ELECTRONIC CONTROLS LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS J.D. BELL AND O. HODGES.

APPEARANCES AT THE HEARING: ROBERT P. ARMSTRONG, J.A. SHIRKIE, JANET DENIKE AND WINSTON BRANT FOR THE APPLICANT; A.P. TARASUK AND ALAN NEVILL FOR THE RESPONDENT; WILLIAM A. PROWSE AND TONNIS ROZEMA FOR THE GROUP OF EMPLOYEES.

DECISION OF THE BOARD: JUNE 7, 1971.

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3. IN THIS CASE A STATEMENT OF DESIRE WAS FILED BY THE GROUP

OF EMPLOYEES AND THE BOARD HEARD EVIDENCE CONCERNING THE ORIGATION AND CIRCULATION OF THE STATEMENT OF DESIRE. PURSUANT TO FORM 5, NOTICE TO EMPLOYEES OF APPLICATION FOR CERTIFICATION AND OF HEARING, PARAGRAPH 8, THE EMPLOYEES ARE

"...REQUIRED TO TESTIFY OR PRODUCE A WITNESS OR WITNESSES WHO WILL BE ABLE TO TESTIFY FROM HIS OR THEIR PERSONAL KNOWLEDGE AND OBSERVATION AS TO (A) THE CIRCUMSTANCES CONCERNING THE ORIGATION OF THE MATERIAL FILED, AND (B) THE MANNER IN WHICH EACH OF THE SIGNATURES WAS OBTAINED."

IN THE EXPLANATORY NOTE TO PARAGRAPH 8 THE FOLLOWING IS PROVIDED:

"WHERE EMPLOYEES FAIL TO ATTEND IN PERSON OR BY A REPRESENTATIVE OR TO TESTIFY OR PRODUCE WITNESSES TO TESTIFY AS PROVIDED IN PARAGRAPH 8 ABOVE, THE BOARD NORMALLY DOES NOT ACCEPT THE STATEMENT OF DESIRE AS CASTING DOUBT ON THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT."

4. IN THIS CASE MR. W.A. PROWSE, APPEARED FOR THE GROUP OF EMPLOYEES AND ADVISED WITH RESPECT TO HIS PERSONAL KNOWLEDGE AND OBSERVATION AS TO THE MANNER IN WHICH A NUMBER OF SIGNATURES WERE OBTAINED. FURTHER, MR. PROWSE ADVISED THAT AT ONE STAGE THE STATEMENT OF DESIRE WAS TAKEN BY ANOTHER EMPLOYEE WHO OBTAINED THE REMAINING SIGNATURES ON THE STATEMENT OF DESIRE. MR. PROWSE WAS NOT ABLE TO TESTIFY FROM HIS OWN PERSONAL KNOWLEDGE AS TO THE MANNER IN WHICH EACH OF THOSE SIGNATURES WAS OBTAINED AND THE PERSON WHO OBTAINED THE SIGNATURES WAS NOT PRESENT. ACCORDINGLY, THE REQUIREMENTS OF FORM 5 HAVE NOT BEEN SATISFIED AND THOSE SIGNATURES WHICH WERE NOT OBTAINED BY MR. PROWSE ARE NOT ACCEPTABLE AS CASTING DOUBT ON THE EVIDENCE OF MEMBERSHIP FILED.

5. HAVING REGARD TO THE SIGNATURES OBTAINED BY MR. PROWSE AND AFTER COMPARING THOSE SIGNATURES WITH THE MEMBERSHIP EVIDENCE FILED BY THE APPLICANT WE ARE OF THE OPINION THAT THERE IS NOT SUFFICIENT DOUBT CAST ON THE EVIDENCE OF MEMBERSHIP TO REDUCE THE APPLICANT'S MEMBERSHIP EVIDENCE BELOW THE PERCENTAGE OF MEMBERSHIP CARDS REQUIRED FOR CERTIFICATION, I.E. THERE IS NOT SUFFICIENT OVERLAP.

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7. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

18659-70-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 93 (APPLICANT) v. BELCOURT CONSTRUCTION (OTTAWA) LIMITED (RESPONDENT).

BEFORE: R.A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS J.D. BELL AND E. BOYER.

DECISION OF THE BOARD: JUNE 8, 1971.

1. THE BOARD NOTES THE AGREEMENT OF THE PARTIES TO THE SUBSTITUTION OF AN EMPLOYER REPRESENTATIVE IN THE PLACE AND STEAD OF THE LATE MR. R.W. TEAGLE AND THE APPOINTMENT BY THE CHAIRMAN, MR. G.W. REED, Q.C., OF MR. J.D. BELL IN THE PLACE AND STEAD OF MR. R.W. TEAGLE.
2. IN THIS APPLICATION, WHICH WAS FILED ON NOVEMBER 10, 1970, THE APPLICANT IS SEEKING CERTIFICATION WITH RESPECT TO A BARGAINING UNIT OF "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF BELCOURT CONSTRUCTION (OTTAWA) LIMITED IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN". THE RESPONDENT HAS TAKEN THE POSITION THAT IT DID NOT HAVE ANY CARPENTERS IN ITS EMPLOY AND THAT THE CARPENTERS WHO FORM THE SUBJECT-MATTER OF THIS APPLICATION WERE ON NOVEMBER 10, 1970 IN THE EMPLOY OF ONE OF ITS SUB-CONTRACTORS, MARDEL CO. INC. (HEREINAFTER REFERRED TO AS "MARDEL"). A CERTIFICATE ISSUED TO THE APPLICANT ON NOVEMBER 4, 1970 FOR THE BARGAINING UNIT REFERRED TO ABOVE WITH RESPECT TO MARDEL (SEE BOARD FILE NO. 18563-70-R). THE APPLICANT TAKES THE POSITION THAT THE CARPENTERS WHO FORM THE SUBJECT-MATTER OF THIS APPLICATION WERE, ON NOVEMBER 10, 1970, EMPLOYEES OF THE RESPONDENT.
3. THE BOARD HAS CONSIDERED THE REPORTS OF THE EXAMINER TOGETHER WITH THE ORAL AND WRITTEN REPRESENTATIONS OF THE PARTIES.
4. DURING SEPTEMBER OF 1970 THE RESPONDENT, WHICH IS AN OWNER-BUILDER, ENTERED INTO THREE SEPARATE CONTRACTS WITH MARDEL; AN EMPLOYER BASED IN MONTREAL AND HAVING NO CORPORATE RELATIONSHIP WITH THE RESPONDENT; FOR EXCAVATION, FORMING AND CARPENTRY WORK IN CONNECTION WITH A BUILDING BEING ERRECTED FOR THE RESPONDENT. IT IS COMMON GROUND THAT MARDEL COMMENCED WORK IN CONNECTION WITH THESE CONTRACTS AS THE EMPLOYER OF A NUMBER OF CARPENTERS. THE PARTIES ARE ALSO IN GENERAL AGREEMENT THAT AT APPROXIMATELY THE END OF OCTOBER 1970, IT BECAME APPARENT THAT MARDEL WAS IN DIFFICULTIES WHICH MADE IT UNCERTAIN WHETHER IT WOULD BE ABLE TO PERFORM THE WORK STIPULATED IN THE THREE CONTRACTS BETWEEN MARDEL AND THE RESPONDENT.

5. AT APPROXIMATELY THE END OF OCTOBER, 1970, THE EMPLOYEES OF MARDEL DISCOVERED THAT THEIR PAY-CHEQUES WHICH WERE ISSUED BY MARDEL WERE NOT BEING HONOURED BY THE BANKS. THESE EMPLOYEES OF MARDEL WERE UNDERSTANDABLY PERTURBED AT THIS TURN OF EVENTS AND THREATENED TO PLACE A LIEN ON THE RESPONDENT'S BUILDING AND TO INSTITUTE A STOPPAGE OF WORK. WORD OF THESE FACTS AND INTENTIONS REACHED THE RESPONDENT, AND, ON NOVEMBER 2, 1970, IT CONVENED A MEETING WITH THE AGGRIEVED EMPLOYEES OF MARDEL AND MARDEL'S SUPERINTENDENT FOREMAN, WILBROD COTE. ARTHUR GUEVREMONT AND JERRY DUBE, RESPECTIVELY SUPERINTENDENT AND PROJECT MANAGER OF THE RESPONDENT REPRESENTED THE RESPONDENT AT THIS MEETING. THE EMPLOYEES OF MARDEL AGREED TO CONTINUE WORKING ONLY IF THE RESPONDENT WOULD GUARANTEE THEIR PAY. AT THIS MEETING ON NOVEMBER 2, 1970, IT WAS APPARENTLY AGREED THAT THE RESPONDENT WOULD GUARANTEE THE PAY OF MARDEL'S EMPLOYEES IN RETURN FOR THESE EMPLOYEES SIGNING A WAIVER OF LIEN WHEN THEY RECEIVED THEIR PAY-CHEQUES FROM THE RESPONDENT. THE RESPONDENT WAS RECEIVING SUMS OF MONEY BY WAY OF MORTGAGE DRAWINGS AND WAS CONCERNED THAT LIENS SHOULD NOT INTERFERE WITH AN ORDERLY PAYMENT OF MORTGAGE MONIES. THE FOREGOING SETS FORTH THE FACTUAL SITUATION REGARDING THE EMPLOYEES AFFECTED BY THIS APPLICATION SHORTLY BEFORE THIS APPLICATION FOR CERTIFICATION WAS FILED.

6. THE RELATIONSHIP BETWEEN MARDEL, THE RESPONDENT AND THE EMPLOYEES AFFECTED BY THIS APPLICATION FOR CERTIFICATION MAY BE CONSIDERED UNDER THESE HEADINGS, NAMELY, THE ADMITTED CONTRACTURAL RELATIONSHIP BETWEEN MARDEL AND THE RESPONDENT, THE SOURCE AND NATURE OF THE SUPERVISORY POWERS EXERCISED OVER THE EMPLOYEES AFFECTED BY THIS APPLICATION AND THE CIRCUMSTANCES SURROUNDING THE PAYMENT OF WAGES TO THE EMPLOYEES AFFECTED BY THIS APPLICATION.

7. CONSIDERING NOW THE FIRST POINT. THERE IS NO EVIDENCE BEFORE THE BOARD THAT AS OF NOVEMBER 10, 1970 THE VARIOUS CONTRACTS BETWEEN MARDEL AND THE RESPONDENT WERE COMPLETED, REPUDIATED OR TERMINATED. PARTIAL PAYMENT WAS MADE BY THE RESPONDENT TO MARDEL IN RESPECT OF THE INITIAL WORK PERFORMED BY MARDEL FOR THE RESPONDENT AND IN FEBRUARY OF THIS YEAR SOLICITORS FOR MARDEL WROTE TO THE RESPONDENT DEMANDING FURTHER PAYMENTS ON THE CONTRACTS. IT ALSO APPEARS THAT AT THE TIME THIS APPLICATION FOR CERTIFICATION WAS MADE MARDEL WAS PAYING FOR THE SUPPLIES DELIVERED TO THE JOB-SITE.

8. THE APPLICANT ADDUCED CONSIDERABLE EVIDENCE BEFORE THE EXAMINER CONCERNING THE FACT THAT GUEVREMONT ORDERED SUPPLIES ON BEHALF OF MARDEL AND OFTEN SIGNED FOR THEIR RECEIPT ON THE JOB-SITE WHEN A REPRESENTATIVE OF MARDEL WAS NOT AVAILABLE. IN OUR OPINION THIS FACT IS OF NO GREAT SIGNIFICANCE WHEN WE CONSIDER THAT GUEVREMONT PERFORMED THIS FUNCTION IN SEPTEMBER AND OCTOBER OF 1970 (WHEN THERE WAS NO DISPUTE AS TO WHO EMPLOYED THE EMPLOYEES AFFECTED BY THIS APPLICATION) AS

WELL AS IN THE FOLLOWING MONTHS. MOREOVER, GUEVREMONT RENDERED SIMILAR ASSISTANCE TO OTHER SUB-CONTRACTORS ON THE JOB-SITE, ESPECIALLY FOR THOSE SUB-CONTRACTORS WHO WERE BASED OUTSIDE OTTAWA. WE ALSO NOTE THAT HE NEVER CALLED FOR SUPPLIES WITHOUT FIRST SPEAKING TO COTE OR SOMEONE ELSE FROM MARDEL. WE FIND NOTHING IN THIS ASPECT OF THE EVIDENCE TO SUGGEST THAT THE RESPONDENT WAS THE EMPLOYER OF THE EMPLOYEES AFFECTED BY THIS APPLICATION ON NOVEMBER 10, 1970.

9. TURNING OUR ATTENTION NOW TO THE SOURCE AND NATURE OF THE SUPERVISORY POWERS EXERCISED OVER THE EMPLOYEES AFFECTED BY THIS APPLICATION, WE FIND THAT THE EVIDENCE ON THESE POINTS DOES NOT ASSIST THE APPLICANT BUT RATHER POINTS TO THE FACT THAT THESE EMPLOYEES WERE NOT EMPLOYED BY THE RESPONDENT ON NOVEMBER 10, 1970.

10. THE EVIDENCE ESTABLISHES THAT WILBROD COTE RECEIVED INSTRUCTIONS ON HOW TO PERFORM THE CONTRACT FROM PERSONS ASSOCIATED WITH MARDEL WHO CAME FROM MONTREAL TO THE JOB-SITE IN OTTAWA. HE LAST RECEIVED THESE ORAL INSTRUCTIONS ON OCTOBER 30 OF LAST YEAR AND IT APPEARS THAT AS OF NOVEMBER 10, 1970, HE DID NOT REQUIRE FURTHER INSTRUCTIONS IN CONNECTION WITH THE CONTRACT. THERE IS NO INDICATION IN THE EVIDENCE BEFORE US THAT COTE RECEIVED INSTRUCTIONS FROM OR WAS UNDER THE SUPERVISION OF THE RESPONDENT. COTE DIRECTED AND SUPERVISED THE EMPLOYEES AFFECTED BY THIS APPLICATION. HE KEPT THEIR TIME RECORDS, HANDED OUT THE PAY CHEQUES TO THE EMPLOYEES AND REQUESTED THE APPLICANT TO SUPPLY ADDITIONAL CARPENTERS FROM TIME TO TIME BY ASKING GUEVREMONT TO CALL THE APPLICANT. THE EXPLANATION OFFERED FOR USING GUEVREMONT WAS THAT WILBROD COTE HAD DIFFICULTY WITH HIS ENGLISH.

11. THE APPLICANT INTRODUCED EVIDENCE THAT FOUR OF ITS STAFF OF FIVE SPOKE BOTH ENGLISH AND FRENCH. THE THRUST OF THIS EVIDENCE WAS PRESUMABLY TO SHOW THAT WILBROD COTE COULD HAVE TELEPHONED THE APPLICANT AND HIRED CARPENTERS HIMSELF. THIS APPROACH BY THE APPLICANT, HOWEVER, OVERLOOKS THE LACK OF EVIDENCE TO SHOW THAT WILBROD COTE, A MAN FROM EASTMAN IN THE EASTERN TOWNSHIPS OF QUEBEC, WAS AWARE OF THIS FACT. THERE IS NO EVIDENCE THAT THE RESPONDENT SUPERVISED OR CONTROLLED THE EMPLOYEES AFFECTED BY THIS APPLICATION.

12. THE PAYMENT OF THE WAGES TO THE EMPLOYEES AFFECTED BY THIS APPLICATION WAS CLEARLY MADE BY THE RESPONDENT DURING THE MONTH OF NOVEMBER AND EVEN THEREAFTER. A SERIES OF PAY-CHEQUES ISSUED BY THE RESPONDENT ON NOVEMBER 3, 1970 WAS MADE PAYABLE JOINTLY TO THE INDIVIDUAL EMPLOYEE AND MARDEL CO. INC. HOWEVER, SUBSEQUENT PAY-CHEQUES ISSUED BY THE RESPONDENT WERE MADE PAYABLE SOLELY TO THE EMPLOYEE WITH A REFERENCE ON THE CHEQUE STUBS TO "RE: MARDEL CO." THE REASON WHY THIS CHANGE OCCURRED IS EXPLAINED BY THE REFUSAL OF MARDEL'S BANK TO HAVE ANY FURTHER TRANSACTIONS ON MARDEL'S ACCOUNT AND THE NOTIFICATION BY MARDEL'S BANK TO THE RESPONDENT THAT THE FORMER HAD ASSIGNED ALL

PAYMENTS DUE FROM THE RESPONDENT TO THE FORMER'S BANK.

13. AS STATED EARLIER, THE PAY-CHEQUES WERE GIVEN TO THE EMPLOYEES AFFECTED BY THIS APPLICATION IN RETURN FOR THEIR SIGNING WAIVER OF LIENS DOCUMENTS. THE RESPONDENT, HOWEVER, CONSISTENT WITH ITS ASSERTION THAT IT WAS NOT THE EMPLOYER OF THE EMPLOYEES AFFECTED BY THIS APPLICATION DID NOT MAKE ANY ADJUSTMENTS TO THE PAY RECEIVED BY THE EMPLOYEES WITH RESPECT TO INCOME TAX, UNEMPLOYMENT INSURANCE OR VACATION-WITH-PAY. THE AMOUNTS WHICH THE RESPONDENT PAID TO THE EMPLOYEES AFFECTED BY THIS APPLICATION WERE DEDUCTED FROM THE AMOUNTS DUE TO MARDEL UNDER THE CONTRACTS BETWEEN MARDEL AND THE RESPONDENT.

14. HAVING REGARD TO THE EVIDENCE BEFORE US WE FIND THAT AS OF NOVEMBER 10, 1970 THERE WAS NO INTENTION BETWEEN THE RESPONDENT AND THE EMPLOYEES AFFECTED BY THIS APPLICATION TO CREATE THE RELATIONSHIP OF EMPLOYER AND EMPLOYEE. THERE ARE TWO ESSENTIALS IN THE RELATIONSHIP OF EMPLOYER AND EMPLOYEE, NAMELY: (1) THE EMPLOYEE MUST BE UNDER THE DUTY OF RENDERING PERSONAL SERVICES TO THE EMPLOYER OR TO OTHERS ON BEHALF OF THE EMPLOYER, AND, (2) THE EMPLOYER MUST HAVE THE RIGHT TO CONTROL THE EMPLOYEE'S WORK, EITHER PERSONALLY OR BY ANOTHER EMPLOYEE OR AGENT. SEE PERFORMING RIGHT SOCIETY V. MITCHELL (1924) 1.K.B. 762, 776-779. ON THE EVIDENCE BEFORE US, AND QUITE APART FROM THE INTENTIONS OF THE PARTIES, THESE TWO ESSENTIALS WERE LACKING VIS-A-VIS THE RESPONDENT AND THE EMPLOYEES AFFECTED BY THIS APPLICATION. IN OUR OPINION, THESE EMPLOYEES WERE ON NOVEMBER 10, 1970, EMPLOYEES OF MARDEL AND NOT OF THE RESPONDENT.

15. IN THE RESULT, THEREFORE, THIS APPLICATION FOR CERTIFICATION IS DISMISSED.

111-70-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. ONTARIO BUILDING MATERIALS LIMITED (RESPONDENT).

BEFORE: R.A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS E. BOYER AND F.W. MURRAY.

APPEARANCES AT THE HEARING: BRIAN DUNN, J.C. HORAN AND NICK RUDISI FOR THE APPLICANT AND J. WHEELER AND D.R. BYERS FOR THE RESPONDENT.

DECISION OF THE BOARD: JUNE 14, 1971.

1. THIS IS AN APPLICATION FOR CERTIFICATION.

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3. THE APPLICANT IS SEEKING CERTIFICATION ON BEHALF OF UNIT OF ALL EMPLOYEES OF THE RESPONDENT AT ETOBICOKE, ONTARIO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD.

4. ON APRIL 20, 1967, THE BOARD ISSUED A CERTIFICATE TO LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506, (HEREINAFTER REFERRED TO AS "LOCAL 506") WITH RESPECT TO A BARGAINING UNIT DEFINED AS:

ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD.

ON AUGUST 17, 1967, THE MINISTER OF LABOUR WROTE TO THE RESPONDENT AND LOCAL 506 AND ADVISED THEM THAT HE HAD DECIDED NOT TO APPOINT A BOARD OF CONCILIATION IN REFERENCE TO THE DISPUTE BETWEEN THEM. THE RESPONDENT AND LOCAL 506 DID NOT SIGN A COLLECTIVE AGREEMENT AND THE BARGAINING RIGHTS OF LOCAL 506 WERE NOT TERMINATED IN ANY PROCEEDING BEFORE THE BOARD.

5. ON AUGUST 18, 1968, THE RESPONDENT ENTERED INTO AN AGREEMENT WITH THE EMPLOYEE ASSOCIATION OF ONTARIO BUILDING MATERIALS LTD. (HEREINAFTER REFERRED TO AS THE "ASSOCIATION") RESPECTING RATES OF PAY AND CERTAIN CONDITIONS OF EMPLOYMENT. THIS AGREEMENT STATES THAT IT BECAME EFFECTIVE ON AUGUST 1, 1968 AND REMAINED IN EFFECT UNTIL DECEMBER 31, 1969. THERE WAS NO EVIDENCE BEFORE THE BOARD THAT THIS AGREEMENT WAS RENEWED OR THAT CONCILIATION SERVICES HAD BEEN APPLIED FOR FROM THE MINISTER OF LABOUR.

6. THE PRESIDENT OF THE RESPONDENT WROTE A LETTER TO ITS EMPLOYEES ON JANUARY 16, 1970 STATING THAT CERTAIN IMPROVED BENEFITS WOULD BE PAID AND GIVEN TO THE EMPLOYEES. THIS LETTER, HOWEVER, WAS ADDRESSED "TO MY FELLOW WORKERS" AND NOT TO THE ASSOCIATION. IT WAS ARGUED BY THE RESPONDENT THAT THIS LETTER WAS AN OFFER TO EXTEND AND DID IN FACT EXTEND THE AGREEMENT BETWEEN THE RESPONDENT AND THE ASSOCIATION. BOARD DOES NOT AGREE WITH THIS CONTENTION. EVEN IF THIS LETTER WAS AN OFFER TO THE ASSOCIATION, WHICH CLEARLY IT WAS NOT, THERE WAS NO EVIDENCE BEFORE THE BOARD THAT THERE WAS ANY RESPONSE AT ALL TO THIS LETTER BY THE ASSOCIATION.

7. THE APPLICANT CHALLENGED THE AGREEMENT BETWEEN THE RESPONDENT AND THE ASSOCIATION AND ARGUED THAT THE BOARD SHOULD NOT FIND

SUCH AN AGREEMENT TO BE A COLLECTIVE AGREEMENT WITHIN THE MEANING OF SECTION 1(1)(c) OF THE LABOUR RELATIONS ACT, BECAUSE A COLLECTIVE AGREEMENT MUST BE AN AGREEMENT BETWEEN AN EMPLOYER ON THE ONE HAND AND A TRADE UNION ON THE OTHER. THERE IS NOTHING BEFORE THE BOARD TO INDICATE THAT THE ASSOCIATION IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(j) OF THE LABOUR RELATIONS ACT.

8. IN THESE CIRCUMSTANCES, THE BOARD, FOLLOWING ITS USUAL PRACTICE, DIRECTS THE EMPLOYEE ASSOCIATION OF ONTARIO BUILDING MATERIALS (HEREINAFTER REFERRED TO AS THE "ASSOCIATION") WITHIN TEN DAYS OF THE DATE HEREOF TO FILE SUCH DOCUMENTARY EVIDENCE (IN THE FORM OF A CONSTITUTION OR BY-LAWS) WHICH IT HAS ON HAND WHICH WOULD EVIDENCE ITS EXISTENCE AS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(j) OF THE LABOUR RELATIONS ACT FOR INSPECTION BY THE BOARD AND THE PARTIES TO THIS APPLICATION FOR CERTIFICATION. SEE BOARD OF EDUCATION FOR THE CITY OF SARNIA CASE, BOARD FILE NO. 10832-65-R.

331-71-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. NAVCO FOOD SERVICES LIMITED (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: A. RYDER AND CLIFFORD EVANS FOR THE APPLICANT; C. G. RIGGS FOR THE RESPONDENT.

DECISION OF THE BOARD: JUNE 14, 1971.

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2. THIS IS AN APPLICATION BROUGHT UNDER SECTION 47 OF THE LABOUR RELATIONS ACT FOR A DECLARATION THAT THE APPLICANT UNION HAS ACQUIRED THE RIGHTS, DUTIES AND RESPONSIBILITIES OF ITS PREDECESSOR AUTOMATIC VENDING EMPLOYEES UNION BY REASON OF A MERGER, AMALGAMATION OR TRANSFER OF JURISDICTION.

3. THE EVIDENCE ESTABLISHED THAT ALL MEMBERS OF THE PREDECESSOR UNION WERE ADVISED BY WRITTEN NOTICE THAT A SPECIAL MEETING WOULD BE HELD ON APRIL 14, 1971. THE NOTICE INDICATED THAT THE PURPOSE OF THE MEETING WAS TO RECEIVE, IF MOVED AND SECONDED, DISCUSS, AMEND AND IF DESIRABLE, VOTE UPON TWO IMPORTANT RESOLUTIONS. THE RESOLUTIONS WERE SET OUT IN THE NOTICE IN THE FOLLOWING MANNER:

RESOLUTION NO. 1: THAT THE CONSTITUTION OF THE AUTOMATIC VENDING EMPLOYEES UNION

BE AND THE SAME IS HEREBY AMENDED
BY ADDING THERETO THE FOLLOWING
ARTICLE:

ARTICLE XIV

THE AUTOMATIC VENDING EMPLOYEES
UNION MAY BY A THREE-QUARTERS MA-
JORITY VOTE OF ALL MEMBERS PRESENT
AND VOTING AT A MEETING CALLED FOR
INTER ALIA THAT PURPOSE, MERGE,
AMALGAMATE OR TRANSFER ITS JURIS-
DICTION, RIGHTS, PRIVILEGES, DUTIES
AND ASSETS WITH OR TO ANOTHER TRADE
UNION OR A LOCAL UNION THEREOF.

RESOLUTION NO. 2: THE AUTOMATIC VENDING EMPLOYEES
UNION HEREBY MERGES, AMALGAMATES
WITH AND TRANSFERS ITS JURISDICTION,
RIGHTS, PRIVILEGES, DUTIES AND ASSETS
TO THE RETAIL CLERKS INTERNATIONAL
ASSOCIATION.

4. ARTICLE XI OF THE CONSTITUTION PRIOR TO THE MEETING OF APRIL
14, 1971 STATED:

ALTERATIONS AND ADDITIONS

SECTION 1. ANY ALTERATIONS OR ADDITIONS
TO THIS CONSTITUTION SHALL REQUIRE A THREE-
QUARTERS MAJORITY VOTE OF ALL MEMBERS PRE-
SENT AT A MEETING CALLED FOR THAT PURPOSE.

5. THE NOTICE EXPLAINED THE INTENT BEHIND THE RESOLUTIONS. IT
SET OUT THE MANNER IN WHICH THE BUSINESS OF THE MEETING WOULD BE CON-
DUCTED AND PROVIDED FOR TWO SECTIONS OF THE MEETING IN ORDER TO AC-
COMMODATE MEMBERS WHO MIGHT BE ON SHIFT WORK. THE SECTION MEETING
TIMES WERE 12:30 P.M. AND 7:30 P.M. ON APRIL 14, 1971. THE TIME,
PLACE AND DATE OF THE MEETING WERE CLEARLY DEFINED IN THE NOTICE.

6. A COPY OF THE NOTICE WAS MAILED BY ORDINARY POST TO EACH
MEMBER OF THE PREDECESSOR UNION. IN ADDITION, ARRANGEMENTS WERE MADE
TO ENCLOSE A COPY OF THE NOTICE IN THE PAY ENVELOPE OF EACH MEMBER.
COPIES OF THE NOTICE WERE ALSO POSTED AT VARIOUS LOCALITIES COVERED
BY THE EMPLOYER'S ACTIVITIES. TWO WITNESSES TESTIFIED THAT THEY HAD
EACH RECEIVED A COPY OF THE NOTICE BY MAIL AND IN THEIR RESPECTIVE
PAY ENVELOPES. WE ARE SATISFIED THAT ALL REASONABLE AND PROPER STEPS

WERE TAKEN TO NOTIFY THE MEMBERS OF THE MEETING AND OF ITS PURPOSE AND INTENT. WE MIGHT ADD THAT NOTICE OF THE APPLICATION WAS DULY POSTED AS REQUIRED BY THE BOARD AND THAT NONE OF THE EMPLOYEES AFFECTED HAS INTERVENED IN THE PROCEEDINGS.

7. THERE WERE 81 MEMBERS OF THE PREDECESSOR UNION AT THE DATE OF THE MEETING. NONE OF THE MEMBERS OF THE PREDECESSOR UNION EXCEPT JAMES FULLER ITS PRESIDENT AND MARGARET BUTTERY, VICE-PRESIDENT ATTENDED THE 12:30 P.M. SECTION OF THE MEETING AND NO BUSINESS WAS CONDUCTED AT THAT TIME.

8. FULLER AND BUTTERY ALSO ATTENDED THE 7:30 P.M. SECTION OF THE MEETING. THERE WERE 20 OTHER MEMBERS OF THE PREDECESSOR UNION PRESENT FOR A TOTAL OF 22 OUT OF A MEMBERSHIP OF 81. AFTER A PERIOD OF DISCUSSION, BOTH RESOLUTIONS WERE PUT TO THE MEETING IN THE FORM SET OUT IN THE NOTICE. EACH RESOLUTION WAS PASSED UNANIMOUSLY BY THE 22 PERSONS WHO REMAINED PRESENT THROUGHOUT THE PROCEEDINGS.

9. THE APPLICANT SUBMITTED THAT IT WAS ENTITLED TO A DECLARATION ON THE BASIS OF THE FORGOING PROCEDURES.

10. THE COMPANY, ON THE OTHER HAND, ARGUED THAT A DECLARATION OUGHT NOT TO ISSUE BECAUSE THE AMENDMENTS TO THE CONSTITUTION ATTEMPT TO ACCOMPLISH A FUNDAMENTAL CHANGE IN THE OBJECTS OF THE ASSOCIATION. THE COMPANY CITED ASTGEN ET AL V SMITH ET AL 68 C.L.C.C. 509 (C.A. 69 C.L.L.C. 797) IN SUPPORT OF ITS CONTENTION. IT FURTHER CONTENDED THAT THE DECLARATION OUGHT NOT TO ISSUE BECAUSE A MAJORITY OF THE EMPLOYEES DID NOT VOTE UPON THE ISSUE. THE EMPLOYER REFERRED TO THE FOLLOWING DECISIONS OF THE BOARD:

HYDRO-ELECTRIC COMMISSION OF THE CITY OF
HAMILTON 63 C.L.L.C. ¶16,261; UNION GAS
COMPANY OF CANADA LIMITED O.L.R.B. MONTHLY
REPORT MAY 1970 P. 218; BEEF TERMINAL
LIMITED O.L.R.B. MONTHLY REPORT APRIL 1970
P.75.

11. AS TO THE FIRST OBJECTION, WE FIND THAT THE MEETING HELD BY THE PREDECESSOR UNION AND THE RESOLUTIONS PASSED THEREAT WERE AUTHORIZED BY AND WERE IN COMPLIANCE WITH THE PROVISIONS OF ITS CONSTITUTION INCLUDING VOTING PROCEDURES AND THE PRESERVATION OF THE FUNDAMENTAL OBJECTIVES OF THE ASSOCIATION. THE RESOLUTIONS ARE THEREFORE VALID AND EFFECTIVE FOR THE ACCOMPLISHMENT OF THE PURPOSES SET OUT THEREIN AND FOR THE REQUIREMENTS OF THE BOARD UNDER SECTION 47 OF THE ACT.

12. IN VIEW OF THE ABOVE FINDING BASED UPON COMPLIANCE WITH THE CONSTITUTION, THE SUBMISSIONS OF THE RESPONDENT WITH RESPECT TO THE

ALLEGED DEFICIENCY IN THE NUMBER OF PERSONS VOTING BECAME IRRELEVANT. WE WOULD ADD, HOWEVER, THAT THE CASES RELIED UPON IN THIS ASPECT OF THE RESPONDENT'S ARGUMENT WHICH ARE SET OUT AT THE FOOT OF PARAGRAPH 10 ABOVE MUST, IN FUTURE, BE READ IN LIGHT OF THE DECISION OF THE COURTS IN ASTGEN ET AL V. SMITH ET AL (SUPRA).

13. AS ALREADY INDICATED, WE FIND THAT THE DECISION MADE BY THE PREDECESSOR UNION IS IN ACCORDANCE WITH ITS CONSTITUTION. THE BOARD THEREFORE FINDS AND ACCORDINGLY DECLARES, PURSUANT TO SECTION 47(1) OF THE LABOUR RELATIONS ACT, THAT THE APPLICANT BY REASON OF A MERGER, AMALGAMATION OR TRANSFER OF JURISDICTION HAS ACQUIRED THE RIGHTS, PRIVILEGES AND DUTIES OF ITS PREDECESSOR AUTOMATIC VENDING EMPLOYEES UNION, WHICH WAS THE BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF THE RESPONDENT DEFINED IN A COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND AUTOMATIC VENDING EMPLOYEES UNION EFFECTIVE FROM APRIL 16, 1969 UNTIL DECEMBER 31, 1971.

18979-70-R: CANADIAN MERCHANDISING EMPLOYEES' UNION (APPLICANT) V. STEINBERG'S LIMITED (RESPONDENT) V. RETAIL AND FOOD EMPLOYEES LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (INTERVENER #1) V. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 93 (INTERVENER #2) V. RETAIL CLERKS UNION, LOCAL NO. 486 CHARTERED BY THE RETAIL CLERKS INTERNATIONAL ASSOCIATION (INTERVENER #3) V. RETAIL CLERKS INTERNATIONAL ASSOCIATION (INTERVENER #4) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: DENIS J. POWER AND THOMAS REES FOR THE APPLICANT; MICHAEL MCKEOWN, MALCOLM MACIVER AND JACQUES LESAGE FOR THE RESPONDENT; NO ONE FOR INTERVENER #1; NO ONE FOR INTERVENER #2; IAN SCOTT AND BARRY BAILY FOR INTERVENER #3 AND INTERVENER #4; SHARON LEWIS FOR THE OBJECTORS.

DECISION OF THE BOARD: JUNE 14, 1971.

1. THIS IS AN APPLICATION FOR CERTIFICATION IN WHICH THE APPLICANT CHALLENGED THE STATUS OF RETAIL CLERKS INTERNATIONAL ASSOCIATION ON THE GROUNDS THAT ITS CONSTITUTION CONTAINED A CLAUSE WHICH CONTRAVENED THE PROVISIONS OF SECTION 10 OF THE LABOUR RELATIONS ACT.

2. SECTION 10 OF THE ACT READS AS FOLLOWS:

THE BOARD SHALL NOT CERTIFY A TRADE UNION IF ANY EMPLOYER OR ANY EMPLOYERS' ORGANIZATION HAS PARTICIPATED IN ITS FORMATION OR ADMINISTRATION OR HAS CONTRIBUTED FINANCIAL OR OTHER SUPPORT TO IT OR IF IT DISCRIMINATES AGAINST ANY PERSON BECAUSE OF HIS RACE, CREED, COLOUR, NATIONALITY, ANCESTRY OR PLACE OF ORIGIN.

3. THE CLAUSE IN THE CONSTITUTION OF RETAIL CLERKS INTERNATIONAL ASSOCIATION WHICH WAS PUT IN ISSUE BY THE APPLICANT, ON THE GROUNDS THAT IT DISCRIMINATES BECAUSE OF "CREED", READS AS FOLLOWS:

SECTION 6 MEMBERSHIP

ELIGI- BILITY

(A) ALL PERSONS ARE ELIGIBLE TO MEMBERSHIP IN THE RETAIL CLERKS INTERNATIONAL ASSOCIATION WHO ARE ENGAGED IN WORK WITHIN ITS JURISDICTION AND WHO ARE UNDER NO RESTRICTIONS SPECIFIED IN ITS CONSTITUTION AND LAWS. MEMBERSHIP SHALL BE CLASSIFIED AS ACTIVE, NON-ACTIVE, GENERAL, PAID-UP LIFE, HONORARY AND ASSOCIATE. PROVIDED, HOWEVER, THAT ANY PERSON WHO IS A MEMBER OF, OR SUBSCRIBES TO, OR SUPPORTS THE PRINCIPLES OF A COMMUNIST OR FASCIST PARTY OR SIMILAR ORGANIZATION, HAVING AS ITS PURPOSE TO OVERTHROW THE GOVERNMENT OF THE UNITED STATES OR OF CANADA, BY FORCE OR VIOLENCE, OR TO DENY TO CITIZENS THE GUARANTEE OF THE BILL OF RIGHTS, OR TO THROTTLE OR ELIMINATE A FREE TRADE LABOR MOVEMENT, SHALL NOT BE ELIGIBLE FOR ADMISSION TO MEMBERSHIP IN THIS INTERNATIONAL ASSOCIATION, NOR SHALL SUCH PERSON HOLD MEMBERSHIP THEREIN. ANY MEMBER CHARGED AS STATED ABOVE SHALL BE TRIED IN ACCORDANCE WITH THE PROCEDURE SET FORTH IN THIS INTERNATIONAL CONSTITUTION AND LAWS AND IF FOUND GUILTY SHALL BE FOREVER BARRED FROM MEMBERSHIP IN THIS INTERNATIONAL ASSOCIATION. ANY INDIVIDUAL WHO HAS OBTAINED MEMBERSHIP BY FALSE STATEMENTS AS TO THE ABOVE SHALL BE EXPELLED AFTER PROPER TRIAL IN ACCORDANCE WITH THE CONSTITUTION AND LAWS OF THIS INTERNATIONAL ASSOCIATION.

4. IT WAS THE APPLICANT'S POSITION THAT "ANY PERSON WHO IS A MEMBER OF, OR SUBSCRIBES TO, OR SUPPORTS THE PRINCIPLES OF A COMMUNIST OR FASCIST PARTY OR SIMILAR ORGANIZATION, HAVING AS ITS PURPOSE TO OVERTHROW THE GOVERNMENT OF THE UNITED STATES OR OF CANADA, BY FORCE OR VIOLENCE, ETC." IS A PERSON WHO IS DISCRIMINATED AGAINST BY THE CONSTITU-

TIONAL PROVISION BECAUSE OF HIS "CREED" CONTRARY TO THE PURPOSE AND INTENT OF SECTION 10 OF THE ACT.

5. THE SHORTER OXFORD ENGLISH DICTIONARY DEFINES "CREED" AS FOLLOWS: "A BRIEF SUMMARY OF CHRISTIAN DOCTRINE. MORE GENERALLY: A CONFESSION OF FAITH. A PROFESSED SYSTEM OF RELIGIOUS BELIEF; A SET OF OPINIONS ON ANY SUBJECT."

6. IN BLACK'S LAW DICTIONARY "CREED" IS DEFINED AS "CONFESSION OR ARTICLES OF FAITH," "FORMAL DECLARATION OF RELIGIOUS BELIEF," "ANY FORMULA OR CONFESSION OF RELIGIOUS FAITH," AND "A SYSTEM OF RELIGIOUS BELIEF."

7. THE CONSTITUTIONAL RESTRICTION REFERRED TO ABOVE SEEMS TO BE THE RULE RATHER THAN THE EXCEPTION IN CONSTITUTIONS OF INTERNATIONAL UNIONS. A SIMILAR PROVISION MAY BE FOUND IN THE CONSTITUTIONS OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA; INTERNATIONAL UNION, ALLIED INDUSTRIAL WORKERS OF AMERICA; INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS; INTERNATIONAL UNION UNITED STEELWORKERS OF AMERICA; THE BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA; AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA; INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW), TO NAME BUT A FEW.

8. IT WAS THE APPLICANT'S POSITION THAT BELIEF OR MEMBERSHIP IN THE COMMUNIST PARTY OR A FASCIST PARTY WAS A "CREED" WITHIN THE MEANING OF SECTION 10 OF THE ACT.

9. WHILE IT MAY BE POSSIBLE TO EXTEND THE MEANING OF THE WORD CREED TO INCLUDE SUCH BELIEFS, SINCE COMMUNISM OR FASCISM MAY BE CHARACTERIZED AS "A SET OF OPINIONS ON ANY SUBJECT" WITHIN THE MEANING OF THE DEFINITION OF CREED FOUND IN THE SHORTER OXFORD ENGLISH DICTIONARY, WE ARE OF THE VIEW THAT THE TERM "CREED" AS USED IN SECTION 10 PERTAINS TO RELIGIOUS BELIEF. COMMUNISM AND FASCISM ARE MORE IN THE NATURE OF POLITICAL MOVEMENTS OR PARTIES. IT IS ALSO NOTED THAT THE CONSTITUTIONAL RESTRICTION CONTAINED IN THE RETAIL CLERKS INTERNATIONAL ASSOCIATION'S CONSTITUTION PROHIBITS MEMBERSHIP BY PERSONS WHO BELONG TO THE ENUMERATED ORGANIZATIONS "HAVING AS ITS PURPOSE TO OVERTHROW THE GOVERNMENT OF THE UNITED STATES OR OF CANADA, BY FORCE OR VIOLENCE... OR TO THROTTLE OR ELIMINATE A FREE TRADE LABOR MOVEMENT..." IT MAY WELL BE THAT AN ORGANIZATION WHICH IS NOMINALLY COMMUNIST WOULD NOT HAVE THE PURPOSES DESCRIBED ABOVE. IN ANY EVENT, WE ARE NOT PREPARED TO HOLD THAT MEMBERSHIP IN SUCH ORGANIZATIONS CONSTITUTES THE ADHERENCE TO A "CREED" WITHIN THE MEANING OF SECTION 10 OF THE ACT. IF THE APPLICANT'S INTERPRETATION OF THE TERM "CREED" AS USED IN SECTION 10 OF THE ACT IS SOUND, A UNION WOULD BE REQUIRED TO ACCEPT AS MEMBERS PERSONS WHO WERE DEDICATED TO THE DESTRUCTION OF THE UNION OR PERSONS WHO

WERE VIOLENTLY OPPOSED TO ALL OF THE OBJECTS OF THE UNION. WE ARE NOT SATISFIED THAT THE LEGISLATURE INTENDED TO IMPOSE SUCH AN IMPOSSIBLE BURDEN ON UNIONS. THE USUAL AND COMMONLY ACCEPTED MEANING OF "CREED" PERTAINS TO RELIGIOUS BELIEF OR "FAITH" IN THE RELIGIOUS SENSE. IT IS THIS LATTER INTERPRETATION OF THE WORD "CREED" THAT WE PLACE ON THAT WORD AS USED IN SECTION 10 OF THE ACT.

10. FOR THE REASONS SET OUT ABOVE, WE ARE UNABLE TO GIVE EFFECT TO THE APPLICANT'S ARGUMENTS WITH RESPECT TO THE STATUS OF THE RETAIL CLERKS INTERNATIONAL ASSOCIATION AND WE ACCORDINGLY FIND THAT THE APPLICANT'S CONSTITUTION DOES NOT DISCRIMINATE AGAINST ANY PERSON BECAUSE OF HIS CREED.

11. THE APPLICANT IN THIS MATTER HAS APPLIED TO BE CERTIFIED AS BARGAINING AGENT FOR CERTAIN EMPLOYEES OF THE RESPONDENT, INCLUDING HOSTESSES, EMPLOYED IN ITS MIRACLE MART OR DEPARTMENT STORE DIVISION IN THE COUNTIES OF RENFREW, LANARK, LEEDS, CARLETON, GRENVILLE, DUNDAS, STORMONT, RUSSELL, PRESCOTT AND GLENGARRY, SAVE AND EXCEPT GROUP MANAGERS, PERSONS ABOVE THE RANK OF GROUP MANAGER, SECURITY OFFICERS, GUARDS AND OFFICE STAFF.

12. THE HISTORY OF THE REPRESENTATION OF SUCH EMPLOYEES MAY BE BRIEFLY SUMMARIZED AS FOLLOWS. THE RETAIL CLERKS INTERNATIONAL ASSOCIATION WAS CERTIFIED AS BARGAINING AGENT FOR CERTAIN EMPLOYEES OF THE RESPONDENT AT OTTAWA. FOLLOWING CERTIFICATION THE RETAIL CLERKS INTERNATIONAL ASSOCIATION CAUSED A COLLECTIVE AGREEMENT TO BE ENTERED INTO BETWEEN THE RESPONDENT AND RETAIL CLERKS UNION, LOCAL NO. 486 COVERING THE EMPLOYEES FOR WHOM THE RETAIL CLERKS INTERNATIONAL ASSOCIATION WAS CERTIFIED. SUBSEQUENTLY, A COLLECTIVE AGREEMENT WAS ENTERED INTO BETWEEN LOCAL 486 AND THE RESPONDENT COVERING THE EMPLOYEES IN THE GEOGRAPHIC AREA DESCRIBED ABOVE.

13. PRIOR TO MARCH 20, 1968, THERE WERE THREE LOCALS OF THE RETAIL CLERKS INTERNATIONAL ASSOCIATION WHICH ENTERED INTO THE PICTURE AND FURTHER COMPLICATED THE MATTERS WITH WHICH WE ARE HERE CONCERNED. LOCAL 486 COVERED THE OTTAWA VALLEY AREA WITH WHICH WE ARE HERE CONCERNED. LOCAL 486R COVERED CERTAIN RETAIL EMPLOYEES OF THE RESPONDENT IN MONTREAL. LOCAL 486W COVERED CERTAIN WAREHOUSE EMPLOYEES OF THE RESPONDENT IN MONTREAL. THE THREE LOCALS DECIDED TO "MERGE INTO LOCAL 486". AT THE TIME OF THE MERGER THE NAME OF LOCAL 486 WAS CHANGED TO LOCAL 500. THE RESPONDENT RECOGNIZED LOCAL 500 AS THE SUCCESSOR TO THE THREE LOCALS THAT HAD MERGED. THE RESPONDENT BARGAINED WITH LOCAL 500 FOR A RENEWAL OF THE COLLECTIVE AGREEMENT COVERING THE EMPLOYEES WITH WHOM WE ARE HERE CONCERNED. HOWEVER, BECAUSE OF CERTAIN DIFFICULTIES WITH RESPECT TO THE TIMING OF THE MERGER IN SO FAR AS THE LABOUR LAWS OF THE PROVINCE OF QUEBEC WERE CONCERNED, LOCAL 500 ENTERED INTO A COLLECTIVE AGREEMENT WITH THE RESPONDENT ON NOVEMBER 10, 1969.

IN THE NAME OF "RETAIL CLERKS UNION, LOCAL NO. 486 (CHARTERED BY THE RETAIL CLERKS INTERNATIONAL ASSOCIATION)". SINCE LOCAL 486 HAD CEASED TO EXIST UNDER THAT NAME, IT MUST BE FOUND THAT LOCAL 500 INTENTIONALLY MISDESCRIBED ITSELF AS LOCAL 486 IN THE COLLECTIVE AGREEMENT OF NOVEMBER 10, 1969.

14. FOR REASONS UNEXPLAINED, LOCAL 500 WAS PLACED IN TRUSTEESHIP BY THE RETAIL CLERKS INTERNATIONAL ASSOCIATION. SUBSEQUENTLY, THE OTTAWA AREA EMPLOYEES BECAME DISENCHANTED WITH THE NEW ARRANGEMENTS UNDER THE MERGED LOCAL 500 WHICH CONTINUED IN TRUSTEESHIP, AND REQUESTED THAT A NEW LOCAL BE CHARTERED BY THE RETAIL CLERKS INTERNATIONAL ASSOCIATION COVERING THE OTTAWA VALLEY AREA.

15. ON NOVEMBER 2, 1970, DURING THE TERM OF OPERATION OF THE COLLECTIVE AGREEMENT DESCRIBED ABOVE, THE RETAIL CLERKS INTERNATIONAL ASSOCIATION CHARTERED A NEW LOCAL WHICH HAD A GEOGRAPHIC AREA COVERING THE EMPLOYEES WITH WHOM WE ARE HERE CONCERNED AND THIS NEW LOCAL WAS CALLED "LOCAL 486". AFTER THE CHARTER WAS ISSUED A GENERAL MEETING OF MEMBERS OF LOCAL 486 WAS HELD AT OTTAWA ON DECEMBER 1, 1970 AT WHICH A VICE-PRESIDENT OF THE RETAIL CLERKS INTERNATIONAL ASSOCIATION EXTENDED FRATERNAL GREETINGS TO THE NEW LOCAL ON BEHALF OF THE INTERNATIONAL PRESIDENT. AT THIS MEETING A RESOLUTION WAS PROPOSED AND ADOPTED BY A VOTE. THIS RESOLUTION READS IN PART AS FOLLOWS:

THEREFORE BE IT RESOLVED UPON MOTION DULY MADE, SECONDED AND CARRIED THAT THE MEMBERS ASSEMBLED HEREBY ACCEPT THE CHARTER OF THE RETAIL CLERKS INTERNATIONAL ASSOCIATION, ACCORDING TO ITS TERMS, AND SUBJECT TO THE CONSTITUTION OF THE RETAIL CLERKS INTERNATIONAL ASSOCIATION, AS LOCAL NUMBER 486.

AND BE IT RESOLVED UPON MOTION DULY MADE, SECONDED AND CARRIED THAT THE MEMBERS OF THE RETAIL CLERKS INTERNATIONAL ASSOCIATION THROUGH LOCAL 500 EMPLOYED IN OTTAWA, ONTARIO INCLUDING THE FOLLOWING COUNTIES IN ONTARIO: RENFREW, FRONTENAC, LANARK, LEED, GRENVILLE, CARLETON, DUNDAS, RUSSELL, STORMONT, PRESCOTT, GLENGARRY, HASTINGS, PRINCE EDWARD, LENNOX AND ADDINGTON; AND THE COUNTIES OF HULL AND GATINEAU IN THE PROVINCE OF QUEBEC BE AND THE SAME ARE HEREBY VESTED WITH MEMBERSHIP IN THE INTERNATIONAL ASSOCIATION THROUGH LOCAL 486.

AND BE IT FURTHER RESOLVED UPON MOTION DULY MADE, SECONDED AND CARRIED THAT THE FOLLOWING PERSONS BE THE OFFICERS OF LOCAL 486 PRO TEM:

(SEVEN PERSONS ARE NAMED AS OFFICERS)

16. THIS RESOLUTION WAS ADOPTED BY A VOTE OF THE PERSONS PRESENT AT THE MEETING. IMMEDIATELY FOLLOWING THE ADOPTION OF THE RESOLUTION, THE INTERNATIONAL VICE-PRESIDENT WHO WAS IN ATTENDANCE AT THE MEETING READ ANOTHER LETTER FROM THE INTERNATIONAL PRESIDENT WHICH ANNOUNCED THAT THE INTERNATIONAL PRESIDENT HAD PLACED THE NEWLY CHARTERED LOCAL INTO TRUSTEESHIP EFFECTIVE DECEMBER 1, 1970. THE NEW LOCAL 486 HAS CONTINUED IN TRUSTEESHIP UP TO THE DATE OF THE HEARING IN THIS MATTER, MAY 27, 1971.

17. ON FEBRUARY 7, 1971, THE INSTANT APPLICATION WAS MADE.

18. THE APPLICANT IN THIS MATTER FILED 212 COMBINATION APPLICATION FOR MEMBERSHIP AND RECEIPT CARDS OF WHICH 180 CORRESPONDED WITH NAMES ON THE RESPONDENT'S LIST OF EMPLOYEES. HOWEVER, 90 OF THE MEMBERSHIP DOCUMENTS ARE APPLICATIONS FOR MEMBERSHIP IN THE "CANADIAN MERCHANDISING EMPLOYEES' UNION, LOCAL 102".

19. BY DECISION DATED NOVEMBER 9, 1970 IN THE ISLAND PARK FOOD-MART LTD. (RE) GOLDSTEIN IGA CASE, OLRB MONTHLY REPORT, NOVEMBER 1970, P. 838, THE BOARD FOUND THAT CANADIAN MERCHANDISING EMPLOYEES' UNION, LOCAL 102 WAS NOT A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT. THERE WAS NO EVIDENCE THAT ANY STEPS WERE TAKEN FOLLOWING THE BOARD'S DECISION OF NOVEMBER 9, 1970 TO CORRECT ANY DEFECTS THAT THE APPLICANT HAD MADE IN ITS ATTEMPTS TO CHARTER LOCAL 102. HOWEVER, OF THE MEMBERSHIP EVIDENCE IN LOCAL 102 THAT WAS FILED BY THE APPLICANT, 69 OF THE COMBINATION APPLICATION FOR MEMBERSHIP AND RECEIPT CARDS WERE DATED PRIOR TO NOVEMBER 9, 1970. IT THEREFORE FOLLOWS THAT THE 69 COMBINATION APPLICATION FOR MEMBERSHIP AND RECEIPT CARDS COULD NOT BE CONSTRUED AS EVIDENCE OF UNION MEMBERSHIP SINCE LOCAL 102 DID NOT EXIST AS A UNION AT THE TIME SUCH CARDS WERE SIGNED. ACCORDINGLY, EVEN THOUGH THE CONSTITUTION OF THE APPLICANT PROVIDES THAT "MEMBERS OF THE LOCAL UNION ARE ALSO MEMBERS OF THE INTERNATIONAL UNION...", THE LOCAL UNION MUST EXIST AS A UNION AT THE TIME THE PERSON BECOMES A MEMBER BEFORE HIS MEMBERSHIP IN THE LOCAL UNION CAN BE CONSTRUED AS MEMBERSHIP IN THE NATIONAL UNION. ACCORDINGLY, WHEN THE APPLICANT'S MEMBERSHIP EVIDENCE IS REDUCED BY THE NUMBER OF CARDS SIGNED IN LOCAL 102, EVEN IF ONLY THOSE CARDS DATED PRIOR TO NOVEMBER 9, 1970 ARE DISCOUNTED, THE APPLICANT'S MEMBERSHIP IS REDUCED BELOW THE 45 PER CENT REQUIRED BY THE ACT AT THE TIME THIS APPLICATION WAS MADE.

20. IT IS FURTHER NOTED THAT THOMAS L. REES, THE PRESIDENT OF THE APPLICANT WHO COMPLETED THE DECLARATION CONCERNING MEMBERSHIP DOCUMENTS (FORM 8) IN THIS MATTER, MADE NO EXPLANATION OR REFERENCE IN HIS DECLARATION CONCERNING THE FACT THAT MANY OF THE MEMBERSHIP CARDS FILED WERE MEMBERSHIP EVIDENCE IN LOCAL 102.

21. THE BOARD IS ACCORDINGLY SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT LESS THAN 45 PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN ANY BARGAINING UNIT THE BOARD MIGHT DEEM TO BE APPROPRIATE, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON APRIL 13, 1971, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

22. THE APPLICATION OF THE APPLICANT IS THEREFORE DISMISSED.

23. IT SHOULD BE NOTED, HOWEVER, THAT THE BOARD'S FINDINGS WITH RESPECT TO THE APPLICANT'S MEMBERSHIP EVIDENCE SHOULD NOT GIVE MUCH COMFORT TO THE RETAIL CLERKS INTERNATIONAL ASSOCIATION OR RETAIL CLERKS UNION, LOCAL NO. 486 CHARTERED BY THE RETAIL CLERKS INTERNATIONAL ASSOCIATION. WHILE THE EVIDENCE WOULD SEEM TO INDICATE THAT LOCAL 500 WAS INDEED THE SUCCESSOR OF LOCAL 486, THERE IS, HOWEVER, A HIATUS IN THE EVIDENCE WHICH WOULD PRECLUDE ANY FINDING BY THIS BOARD THAT THERE WAS A SUCCESSION OF BARGAINING RIGHTS FROM LOCAL 500 TO THE NEWLY CHARTERED LOCAL 486. APART FROM ANY OTHER CONSIDERATION, HOWEVER, THE BOARD IS IMPELLED TO EXPRESS ITS CONCERN WITH RESPECT TO THE MANNER IN WHICH THE NEWLY CHARTERED LOCAL WAS PLACED INTO TRUSTEESHIP BEFORE ANY PROPER ELECTION OF OFFICERS OR BEFORE ANYTHING TRANSPIRED WHICH WOULD REASONABLY JUSTIFY THE ACTION TAKEN BY THE RETAIL CLERKS INTERNATIONAL ASSOCIATION IMMEDIATELY FOLLOWING THE CHARTERING OF A NEW LOCAL. THE INTERNATIONAL ASSOCIATION HAS ATTEMPTED TO EFFECTIVELY CONTROL ALL PHASES OF THE ADMINISTRATION OF THE NEWLY CHARTERED LOCAL 486 AND THE MANNER IN WHICH THAT LOCAL WAS PLACED INTO TRUSTEESHIP IMMEDIATELY FOLLOWING THE ISSUANCE OF THE CHARTER WOULD LEAD TO THE CONCLUSION THAT LOCAL 486 WAS MERELY A "PAPER LOCAL". AGAIN, IT IS A MATTER OF CONCERN TO THIS BOARD THAT LOCAL 500 IN COLLUSION WITH OFFICERS OF THE RETAIL CLERKS INTERNATIONAL ASSOCIATION IMPROPERLY DESCRIBED ITSELF AS LOCAL 486 IN THE COLLECTIVE AGREEMENT EXECUTED WITH THE RESPONDENT ON NOVEMBER 10, 1969. THE BOARD IS MINDFUL OF THE FACT THAT THOMAS REES, THE PRESIDENT OF THE APPLICANT IN THESE PROCEEDINGS, WAS AN INTERNATIONAL REPRESENTATIVE OF RETAIL CLERKS INTERNATIONAL ASSOCIATION AT THE TIME SUCH COLLECTIVE AGREEMENT WAS NEGOTIATED AND WAS PARTY TO THE IMPROPER PROCEDURES SET OUT ABOVE. THE CONSEQUENCES OF THE ACTIVITIES OF MR. REES AND CERTAIN OFFICERS AND OFFICIALS OF RETAIL CLERKS INTERNATIONAL ASSOCIATION AND RETAIL CLERKS UNION, LOCAL NO. 500 ARE SUCH THAT THE EMPLOYEES WITH WHOM WE ARE HERE CONCERNED ARE LEFT IN A VERY UNCERTAIN AND UNSATISFACTORY POSITION WITH RESPECT TO THEIR BARGAINING REPRESENTATIVE AND THESE OFFICIALS MUST BEAR THE RESPONSIBILITY AND INDEED THE BLAME.

24. HAVING REGARD TO THE FINDINGS SET OUT ABOVE, OTHER ISSUES WHICH WERE RAISED IN THESE PROCEEDINGS ARE OF ACADEMIC INTEREST ONLY AND NEED NOT BE DEALT WITH.

495-71-R: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNION 1687 (APPLICANT) v. DEER-MINE SERVICES LIMITED (RESPONDENT).

BEFORE: R.A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

DECISION OF THE BOARD: JUNE 11, 1971.

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7. IN PARAGRAPHS 13 AND 14(2) OF ITS REPLY TO APPLICATION FOR CERTIFICATION, CONSTRUCTION INDUSTRY, THE RESPONDENT HAS STATED:

13. "MICHAEL GAUTHIER SUBMITTED HIS RESIGNATION EFFECTIVE JUNE 2, 1971, AND HAS NOT BEEN EMPLOYED BY THE RESPONDENT SINCE THAT DATE. IF HE IS ONE OF THE EMPLOYEES WHOM THE UNION HAS SIGNED THE RESPONDENT SUBMITS THAT HIS CARD SHOULD BE EXCLUDED WHEN COMPUTING THE SIGNED UP PERCENTAGE."

14(2) "SEE COMMENT IN PARAGRAPH 13 IN RESPECT OF THE EMPLOYMENT OF MICHAEL GAUTHEIR. THE RESPONDENT, OF COURSE HAS NO MEANS OF KNOWING HOW MANY EMPLOYEES HAVE APPLIED FOR MEMBERSHIP IN THE UNION BUT THE RESPONDENT IS OF THE VIEW THAT THE APPLICANT MAY BE IN A VOTE POSITION IN WHICH CASE THE VOTE WOULD BE REQUESTED."

8. WITH REFERENCE TO PARAGRAPH 13 OF THE RESPONDENT'S REPLY, THE BOARD NOTES THAT THE DATE OF THE MAKING OF THIS APPLICATION FOR CERTIFICATION WAS JUNE 1, 1971 AND THAT THE RESPONDENT HAS INCLUDED THE NAME OF MICHAEL (OR MICHEL) GAUTHIER ON THE SCHEDULE A ATTACHED TO ITS REPLY AND WHICH CONTAINS A LIST OF EMPLOYEES AT WORK ON THE DATE OF THE MAKING OF THE APPLICATION. IT IS THE PRACTICE OF THE BOARD IN APPLICATIONS FOR CERTIFICATION FILED UNDER THE CONSTRUCTION INDUSTRY PROVISIONS OF THE LABOUR RELATIONS ACT TO INCLUDE FOR PURPOSES OF THE COUNT ONLY THOSE EMPLOYEES IN THE BARGAINING UNIT AT WORK ON THE DATE OF THE MAKING OF THE APPLICATION - IN THIS CASE THOSE EMPLOYEES WHOSE NAMES APPEAR ON SCHEDULE A. THEREFORE, MICHAEL (OR MICHEL) GAUTHIER IS INCLUDED ON THE LIST FOR THE PURPOSES OF THE COUNT.

9. THIS PRACTICE, OF INCLUDING ONLY THOSE EMPLOYEES AT WORK IN THE BARGAINING UNIT ON THE DATE OF THE MAKING OF THE APPLICATION

FOR THE PURPOSES OF THE COUNT IN APPLICATIONS FOR CERTIFICATION FILED UNDER THE CONSTRUCTION INDUSTRY PROVISIONS OF THE LABOUR RELATIONS ACT, HAS ITS RATIONALE IN THE TYPICAL NATURE OF THE EMPLOYMENT RELATIONSHIP IN THE CONSTRUCTION INDUSTRY. IT IS THE RULE RATHER THAN THE EXCEPTION FOR EMPLOYEES IN THE CONSTRUCTION INDUSTRY TO HAVE AN EMPLOYMENT RELATIONSHIP OF COMPARATIVELY SHORT DURATION WITH ANY GIVEN EMPLOYER. ON OCCASIONS, THIS EMPLOYMENT RELATIONSHIP IS MEASURED IN TERMS OF DAYS RATHER THAN WEEKS OR MONTHS. NOT ONLY MAY THE IDENTITY OF INDIVIDUAL EMPLOYEES IN A DEFINED BARGAINING UNIT CHANGE FROM DAY TO DAY, THE NUMBER OF EMPLOYEES IN A GIVEN BARGAINING UNIT MAY ALSO SUBSTANTIALLY FLUCTUATE FROM DAY TO DAY. RECOGNITION OF THIS LATTER POINT FINDS EXPRESSION, IN PART, IN SECTION 92(2) OF THE LABOUR RELATIONS ACT.

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12. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

206-70-R: INTERNATIONAL BROTHERHOOD OF PAINTERS & ALLIED TRADES LOCAL UNION 1891 (APPLICANT) v. 229704 CONTRACTING LTD. (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: R.A. FURNESS, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: A.M. MINSKY AND A. COLAFRANCESCHI FOR THE APPLICANT; RONALD P. BIDERMAN FOR THE RESPONDENT; AND G. DRAKAKIS, S. EPISKOPOU, P. MITROPOULOS, F. INFANTI, S. TOTH AND G. TSONIS FOR THE OBJECTORS.

DECISION OF R.A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBER E. BOYER: JUNE 9, 1971.

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5. THE HEARING OF THIS APPLICATION FOR CERTIFICATION WAS HELD ON TUESDAY APRIL 27, 1971. THE RESPONDENT FILED TWO LETTERS WITH THE BOARD IN WHICH IT MADE ALLEGATIONS OF IMPROPER OR IRREGULAR CONDUCT CONCERNING THE MANNER IN WHICH THE APPLICANT OBTAINED ITS EVIDENCE OF MEMBERSHIP. THESE LETTERS WERE RECEIVED BY THE BOARD ON FRIDAY APRIL 23, AND MONDAY APRIL 26, 1971, RESPECTIVELY. THE APPLICANT RECEIVED COPIES OF THESE LETTERS ON MONDAY APRIL 26, 1971.

6. THE RESPONDENT ADMITTED TO THE BOARD THAT IT HAD KNOWLEDGE OF THE FACTS WHICH GAVE RISE TO ITS ALLEGATIONS AS EARLY AS APRIL 6,

1971 OR ONE OR TWO DAYS LATER. NO SATISFACTORY EXPLANATION WAS OFFERED BY THE RESPONDENT AS TO WHY IT HAD WAITED UNTIL APRIL 23 AND 26 TO NOTIFY THE BOARD OF ITS ALLEGATIONS. ALL OF THE RESPONDENT'S ALLEGATIONS, WITH THE EXCEPTION OF ONE, WERE CONTAINED IN ITS SECOND LETTER DATED APRIL 26, 1971.

7. IN THE FLECK MANUFACTURING LIMITED CASE, 62 C.L.L.C. 1046, THE BOARD STATED:

IT IS INCUMBENT ON ALL PARTIES TO PROCEEDINGS BEFORE THE BOARD TO INVESTIGATE MATTERS RELEVANT TO THEIR CASES AS EARLY AS POSSIBLE AND IF THEY INTEND TO MAKE ALLEGATIONS OF IMPROPER OR IRREGULAR CONDUCT AGAINST ANOTHER PARTY TO DO SO PROMPTLY. THE OBJECT OF THIS REQUIREMENT, WHICH FINDS EXPRESSION IN SECTION 48 OF THE RULES, IS OBVIOUSLY TO EXPEDITE AND FACILITATE THE HEARING AND PROCESSING OF APPLICATIONS UNDER THE ACT AND TO AVOID PREJUDICE, DELAY OR EMBARRASSMENT TO THE PARTIES INVOLVED. DELAYED AND LAST-MINUTE ALLEGATIONS, WHICH LEAD TO ADJOURNMENTS OR CAUSE PREJUDICE, EMBARRASSMENT OR UNNECESSARY EXPENSE TO THE OTHER PARTIES, AND WHICH WITH REASONABLE DILIGENCE COULD HAVE BEEN MADE AT A MORE TIMELY STAGE OF THE PROCEEDINGS WILL NOT BE ENTERTAINED EXCEPT FOR GOOD AND SUFFICIENT CAUSE.

THE MATERIAL PROVISIONS OF THE RULES THERE REFERRED TO ARE NOW CONTAINED IN SECTION 47(1) AND (2) OF THE BOARD'S RULES OF PROCEDURE. THESE PROVISIONS ARE AS FOLLOWS:

47.-(1) WHERE A PERSON INTENDS TO ALLEGE, AT THE HEARING OF AN APPLICATION OR COMPLAINT, IMPROPER OR IRREGULAR CONDUCT BY ANY PERSON, HE SHALL,

(A) INCLUDE IN THE APPLICATION OR COMPLAINT; OR

(B) FILE A NOTICE OF INTENTION THAT SHALL CONTAIN,

A CONCISE STATEMENTS OF THE MATERIAL FACTS, ACTIONS AND OMISSIONS UPON WHICH HE INTENDS TO RELY AS CONSTITUTING SUCH IMPROPER OR IRREGULAR CONDUCT, INCLUDING THE TIME WHEN AND THE PLACE WHERE THE ACTIONS OR OMISSIONS

COMPLAINED OF OCCURRED AND THE NAMES OF THE PERSONS WHO ENGAGED IN OR COMMITTED THEM, BUT NOT THE EVIDENCE BY WHICH THE MATERIAL FACTS, ACTIONS OR OMISSIONS ARE TO BE PROVED, AND, WHERE HE ALLEGES THAT THE IMPROPER OR IRREGULAR CONDUCT CONSTITUTES A VIOLATION OF ANY PROVISION OF THE ACT, HE SHALL INCLUDE A REFERENCE TO THE SECTION OR SECTIONS OF THE ACT CONTAINING SUCH PROVISION.

- (2) WHERE, IN THE OPINION OF THE BOARD, A PERSON HAS NOT FILED NOTICE OF INTENTION PROMPTLY UPON DISCOVERING THE ALLEGED IMPROPER OR IRREGULAR CONDUCT, HE SHALL NOT ADDUCE EVIDENCE AT THE HEARING OF THE APPLICATION OF SUCH FACTS, EXCEPT WITH THE CONSENT OF THE BOARD, AND, IF THE BOARD DEEMS IT ADVISABLE TO GIVE SUCH CONSENT, IT MAY DO SO UPON SUCH TERMS AND CONDITIONS AS IT THINKS ADVISABLE.

8. HAVING REGARD TO THE UNTIMELY NATURE OF THE RESPONDENT'S ALLEGATIONS AND TO THE ABSENCE OF SATISFACTORY EXPLANATION FOR THEIR LATENESS, IT IS OUR RULING THAT THESE ALLEGATIONS WILL NOT BE ENTER-TAINED.

9. THE RESPONDENT ALLEGED THAT ITS ALLEGATIONS CONSTITUTED FRAUD AND COULD THEREFORE BE RAISED AT ANY TIME. THE ALLEGATIONS REFERRED TO VARIOUS ALLEGED INCIDENTS WHEREIN AN OFFICER OF THE APPLICANT IS SAID TO HAVE TOLD THE RESPONDENT'S EMPLOYEES THAT THE RESPONDENT WANTED THEM TO JOIN THE UNION AND THAT THOSE WHO DID NOT WOULD LOSE THEIR JOBS. IN OUR OPINION SUCH CONDUCT IS COVERED BY THE TERM "IMPROPER OR IRREGULAR CONDUCT" IN SECTION 47 OF THE BOARD'S RULES OF PROCEDURE AND DOES NOT CONSTITUTE FRAUD.

10. WE HAVE HAD AN OPPORTUNITY OF READING THE DECISION OF BOARD MEMBER F.W. MURRAY. THE L'ABBE CONSTRUCTION LIMITED CASE, O.L.R.B. M.R. MARCH 1971, P.141 IS READILY DISTINGUISHABLE FROM THE FACTS OF THE INSTANT CASE. IN THE L'ABBE CASE, A MAJORITY OF THE BOARD, IN ITS DISCRETION, DECIDED TO HEAR ALLEGATIONS THAT COLLUSIVE ACTS BETWEEN AN EMPLOYER AND A TRADE UNION INDUCED EMPLOYEES TO BECOME MEMBERS OF THAT SAME TRADE UNION, AND HAVING FOUND THAT THESE ALLEGATIONS WERE PROVED IN EVIDENCE, FOUND THAT THIS CONDUCT AMOUNTED TO FRAUD WITHIN THE MEANING OF SECTION 44 OF THE LABOUR RELATIONS ACT. THE NATURE OF THE ALLEGATIONS OF IMPROPER OR IRREGULAR CONDUCT IN THE INSTANT CASE ARE QUITE DIFFERENT FROM THE ALLEGATIONS OF COLLUSION MADE IN THE L'ABBE CASE, SUPRA.

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13. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER, F.W. MURRAY: JUNE 9, 1971.

1. I DISSENT.
2. IN VIEW OF THE NATURE OF THE ALLEGATIONS MADE BY THE RESPONDENT I BELIEVE THE BOARD SHOULD HAVE HEARD THE EVIDENCE CONCERNING THESE ALLEGATIONS.
3. THERE IS NO DOUBT THAT THE RESPONDENT DID NOT ACT AS PROMPTLY AS HE COULD HAVE IN FILING THE ALLEGATIONS OR THE PARTICULARS AND THAT IN ACCORDANCE WITH THE BOARD'S PAST PRACTICE WITH RESPECT TO THE APPLICATION OF THE BOARD'S RULES OF PROCEDURE, SECTION 47, THE BOARD MAY DECLINE TO HEAR EVIDENCE CONCERNING SUCH ALLEGATIONS.
4. THE RELEVANT PARTS OF SECTION 47 READS AS FOLLOWS:
 - "47(1) WHERE A PERSON INTENDS TO ALLEGE, AT THE HEARING OF AN APPLICATION OR COMPLAINT, IMPROPER OR IRREGULAR CONDUCT BY ANY PERSON, HE SHALL,
 - (A) INCLUDE IN THE APPLICATION OR COMPLAINT; OR
 - (B) FILE A NOTICE OF INTENTION THAT SHALL CONTAIN,

A CONCISE STATEMENT OF THE MATERIAL FACTS, ACTIONS AND OMISSIONS UPON WHICH HE INTENDS TO RELY AS CONSTITUTING SUCH IMPROPER OR IRREGULAR CONDUCT, INCLUDING THE TIME WHEN AND THE PLACE WHERE THE ACTIONS OR OMISSIONS COMPLAINED OF OCCURRED AND THE NAMES OF THE PERSONS WHO ENGAGED IN OR COMMITTED THEM, BUT NOT THE EVIDENCE BY WHICH THE MATERIAL FACTS, ACTIONS OR OMISSIONS ARE TO BE PROVED, AND WHERE HE ALLEGES THAT THE IMPROPER OR IRREGULAR CONDUCT CONSTITUTES A VIOLATION OF ANY PROVISION OF THE ACT, HE SHALL INCLUDE A REFERENCE TO THE SECTION OR SECTIONS OF THE ACT CONTAINING SUCH PROVISION.
 - (2) WHERE, IN THE OPINION OF THE BOARD, A PERSON

HAS NOT FILED NOTICE OF INTENTION PROMPTLY UPON DISCOVERING THE ALLEGED IMPROPER OR IRREGULAR CONDUCT, HE SHALL NOT ADDUCE EVIDENCE AT THE HEARING OF THE APPLICATION OF SUCH FACTS, EXCEPT WITH THE CONSENT OF THE BOARD AND, IF THE BOARD DEEMS IT ADVISABLE TO GIVE SUCH CONSENT, IT MAY DO SO UPON SUCH TERMS AND CONDITIONS AS IT THINKS ADVISABLE.

5. THE BOARD'S PAST PRACTICE WITH RESPECT TO THE TIMELINESS OF FILING CHARGES AND THE APPLICATION OF SECTION 47, SUB-SECTIONS (1) AND (2) IS BEST DESCRIBED IN THE UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL, CIO-CLC AND FLECK MANUFACTURING LIMITED, 62, CLLC, 1046, CLS, 76-860 -

"IT IS INCUMBENT ON ALL PARTIES TO PROCEEDINGS BEFORE THE BOARD TO INVESTIGATE MATTERS RELEVANT TO THEIR CASES AS EARLY AS POSSIBLE AND IF THEY INTEND TO MAKE ALLEGATIONS OF IMPROPER OR IRREGULAR CONDUCT AGAINST ANOTHER PARTY TO DO SO PROMPTLY. THE OBJECT OF THIS REQUIREMENT, WHICH FINDS EXPRESSION IN SECTION 48 (NOW SECTION 47) OF THE RULES, IS OBVIOUSLY TO EXPEDITE AND FACILITATE THE HEARING AND PROCESSING OF APPLICATIONS UNDER THE ACT AND TO AVOID PREJUDICE, DELAY OR EMBARRASSMENT TO THE PARTIES INVOLVED. DELAYED AND LAST-MINUTE ALLEGATIONS, WHICH LEAD TO ADJOURNMENTS OR CAUSE PREJUDICE, EMBARRASSMENT OR UNNECESSARY EXPENSE TO THE OTHER PARTIES, AND WHICH WITH REASONABLE DILIGENCE COULD HAVE BEEN MADE AT A MORE TIMELY STAGE OF THE PROCEEDINGS WILL NOT BE ENTERTAINED EXCEPT FOR GOOD AND SUFFICIENT CAUSE".

6. THERE IS THEREFORE NO DOUBT THAT THE BOARD'S DECISION WITH RESPECT TO THE INSTANT CASE IS BASED ON THE ESTABLISHED BOARD PRACTICE. HOWEVER, I AM OF THE OPINION THAT THIS PRACTICE IS NOW SOMEWHAT CIRCUMSCRIBED IN VIEW OF THE RECENT BOARD DECISION 18138-70-R, EDMUND BEATTY, ET AL AND L'ABBE CONSTRUCTION LIMITED. IN THE L'ABBE CONSTRUCTION CASE, THE APPLICANT (ANOTHER TRADE UNION) CLAIMED THAT THE RESPONDENT HAD SECURED A FORMER CERTIFICATION ISSUED TO THE RESPONDENT AND COVERING THE EMPLOYEES OF L'ABBE CONSTRUCTION (THE INTERVENER) IMPROPERLY IN THAT THE RESPONDENT TRADE UNION HAD, INTER-ALIA, MADE IT CLEAR TO THE EMPLOYEES IN THEIR ORGANIZ-

ING CAMPAIGN THAT THEIR EMPLOYER WISHED THEM TO JOIN THE RESPONDENT TRADE UNION.

7. AS I UNDERSTAND IT, IN THAT CASE, THE BOARD FOUND THAT SUCH ACTIVITY CONSTITUTED A FRAUD ON THE BOARD WITHIN THE MEANING OF SECTION 44 OF THE ACT, AND THAT THEREFORE THE BOARD SHOULD HEAR THE EVIDENCE CONCERNING SUCH ALLEGATIONS REGARDLESS OF THE TIMELINESS OF FILING CHARGES AND/OR PARTICULARS.
8. IN THE CASE AT BAR, IT IS OF COURSE IMPOSSIBLE TO SAY WHETHER OR NOT THE BOARD WOULD HAVE FOUND, HAVING HEARD THE EVIDENCE, A FRAUD ON THE BOARD HAD BEEN COMMITTED, HOWEVER, IN VIEW OF THE NATURE OF THE ALLEGATIONS, I AM OF THE OPINION THAT IN KEEPING WITH THE ABOVE NOTED DECISION, THE BOARD SHOULD HAVE HEARD THE EVIDENCE RATHER THAN TO DENY THE RESPONDENT THE OPPORTUNITY TO SUBMIT HIS EVIDENCE IN SUPPORT OF HIS ALLEGATIONS.

328-71-R: CHATHAM CONSTRUCTION WORKERS ASSOCIATION LOCAL NO. 53, AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. R. T. CONSTRUCTION (RESPONDENT) V. LOCAL UNION 494 UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (INTERVENER).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND E. BOYER.

APPEARANCES AT THE HEARING: NO ONE FOR THE APPLICANT, NO ONE FOR THE RESPONDENT, W. V. SASSO, IAN LOGAN AND RAMSAY CAVANAUGH FOR THE INTERVENER.

DECISION OF THE BOARD: JUNE 17, 1971.

1. THIS IS AN APPLICATION FOR CERTIFICATION WHICH CAME ON FOR HEARING ON MONDAY, JUNE 14, 1971. NO ONE APPEARED FOR THE APPLICANT AT THE HEARING IN THIS MATTER, HOWEVER DURING THE COURSE OF THE HEARING AND PRIOR TO THE BOARD DISPOSING OF THE APPLICATION, THE BOARD RECEIVED A MESSAGE FROM THE REGISTRAR WHEREIN THE BOARD WAS INFORMED THAT THE REGISTRAR HAD RECEIVED A TELEPHONE CALL FROM THE APPLICANT'S REPRESENTATIVE ADVISING THAT HE HAD EXPERIENCED DIFFICULTIES WITH HIS AUTOMOBILE AND WAS UNABLE TO ATTEND THE HEARING IN THIS MATTER. THE BOARD WAS FURTHER ADVISED THAT THE REPRESENTATIVE HAD ATTEMPTED TO CONTACT OTHER REPRESENTATIVES OF THE APPLICANT WITHOUT SUCCESS. WHEN THIS INFORMATION WAS GIVEN TO THE INTERVENER, THE INTERVENER ADVISED THE BOARD THAT IT COULD NOT AGREE TO AN ADJOURNMENT OF THIS MATTER UNLESS THE APPLICANT WAS PREPARED TO PAY THE WASTED COSTS OF BRINGING A

WITNESS FROM WINDSOR TO ATTEND THE HEARING AND THAT THESE COSTS AMOUNTED TO \$50.00. THE INTERVENER TOOK THE POSITION THAT IT WOULD NOT OBJECT TO AN ADJOURNMENT IF THE ADJOURNMENT WAS CONDITIONED UPON THE APPLICANT PAYING THE INTERVENER'S WASTED COSTS IN THE AMOUNT OF \$50.00.

2. HAVING REGARD TO ALL THE CIRCUMSTANCES AND THE FACT THAT ANY ADJOURNMENT IN THIS CASE WAS NOT IN ANY WAY CAUSED BY OR CONTRIBUTED TO BY THE INTERVENER, THE BOARD DIRECTS THAT THIS APPLICATION BE ADJOURNED TO A DATE TO BE FIXED BY THE REGISTRAR ON CONDITION THAT THE APPLICANT PAY TO THE INTERVENER ITS WASTED COSTS IN THE AMOUNT OF \$50.00. IF THE BOARD IS NOT ADVISED BY THE PARTIES ON OR BEFORE JUNE 30, 1971 THAT SUCH PAYMENT HAS BEEN MADE TO THE INTERVENER, THE BOARD DIRECTS THAT THIS APPLICATION WILL BE DISMISSED FOR NON-APPEARANCE.

459-71-R: SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION LOCAL UNION 540 (APPLICANT) V. C/S CONSTRUCTION SPECIALTIES LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS O. HODGES AND J. E. C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: S. SIMPSON AND R. S. TAYLOR FOR THE APPLICANT; W. S. COOK AND R. DADD FOR THE RESPONDENT; J. MUSCAT FOR THE OBJECTORS.

DECISION OF THE BOARD: JUNE 17, 1971.

1. THIS IS AN APPLICATION FOR CERTIFICATION IN WHICH A STATEMENT OF OBJECTION OR PETITION WAS FILED BEARING THE SIGNATURES OF TEN OUT OF A TOTAL OF TWENTY-FOUR EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. A TOTAL OF TWENTY EMPLOYEES SIGNED UNION CARDS AND OF THESE SIX ALSO SIGNED THE PETITION. THEY COMPRISE WHAT IS REFERRED TO AS THE "OVERLAP". IT, THUS, WAS NECESSARY FOR THE BOARD TO INQUIRE INTO THE ORIGINATION OF THE PETITION AND THE MANNER IN WHICH THE SIGNATURES WERE OBTAINED IN ORDER TO DETERMINE WHETHER THE PETITION CAST DOUBT UPON A SUFFICIENT NUMBER OF MEMBERSHIP CARDS TO REDUCE THE CLEAR EVIDENCE OF MEMBERSHIP BELOW THAT NECESSARY FOR CERTIFICATION AND SO REQUIRE THAT A VOTE BE TAKEN.

2. EVIDENCE IN SUPPORT OF THE PETITION WAS GIVEN BY JERRY MUSCAT, AN EMPLOYEE OF THE RESPONDENT. IN TESTIFYING AS TO THE MANNER IN WHICH THE SIGNATURES TO THE PETITION WERE OBTAINED, THE WITNESS ACCOUNTED FOR SEVEN OF THE TEN SIGNATURES WITH RESPECT TO THE PLACE WHERE AND THE CONDITIONS UNDER WHICH THE SEVEN EMPLOYEES CONCERNED

ATTACHED THEIR SIGNATURES. WITH RESPECT TO THE REMAINING THREE SIGNATURES, HOWEVER, THE WITNESS COULD ONLY SAY THAT IT WAS HIS UNDERSTANDING THAT THEY HAD BEEN PLACED ON THE PETITION IN THE HOUSE OF ANOTHER EMPLOYEE TO WHOM HE HAD GIVEN THE DOCUMENT. HE WAS NOT PRESENT WHEN THESE THREE SIGNED AND CONSEQUENTLY COULD NOT TESTIFY AS TO THE MANNER IN WHICH THEIR SIGNATURES WERE OBTAINED. NO OTHER WITNESS APPEARED IN SUPPORT OF THE PETITION.

3. THE EVIDENCE WITH RESPECT TO THE THREE SIGNATURES WHICH WERE NOT WITNESSED BY MUSCAT IS NOT SUCH AS TO SATISFY THE BOARD WITH RESPECT TO THE MANNER IN WHICH THEY WERE OBTAINED. THE RESULT IS THAT THE EFFECTIVE OVERLAP IS REDUCED TO THREE SIGNATURES. THIS LEAVES THE APPLICANT WITH CLEAR EVIDENCE OF MEMBERSHIP FOR SEVENTEEN OUT OF THE TWENTY-FOUR EMPLOYEES IN THE BARGAINING UNIT WHICH IS SUFFICIENT TO ENTITLE IT TO OUTRIGHT CERTIFICATION.

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7. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

40-70-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. UNIVERSITY OF WINDSOR (RESPONDENT) V. INTERNATIONAL UNION, UNITED PLANT GUARD WORKERS OF AMERICA, AMALGAMATED PLANT GUARDS, LOCAL 1958 (INTERVENER).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND E. BOYER.

DECISION OF THE BOARD: JUNE 17, 1971.

1. THIS IS AN APPLICATION FOR CERTIFICATION IN WHICH THE BOARD IN ITS DECISION OF MAY 4, 1971 MADE CERTAIN FINDINGS BASED ON THE AGREEMENT OF THE PARTIES THAT CERTAIN PERSONS WERE NOT INCLUDED IN THE BARGAINING UNITS IN THIS MATTER ON THE GROUNDS THAT THEY WERE EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS.

2. THE APPLICANT BY LETTER DATED JUNE 1, 1971 HAS REQUESTED THE BOARD TO REVIEW ITS DECISION IN THIS MATTER.

3. PRIOR TO ARRIVING AT ITS DECISION OF MAY 4, THE BOARD BY ITS DECISION OF APRIL 1, 1971 APPOINTED AN EXAMINER TO INQUIRE INTO AND REPORT TO THE BOARD ON THE DUTIES AND RESPONSIBILITIES OF THE PERSONS WHO WERE IN DISPUTE. THE PARTIES HAD FULL OPPORTUNITY AT THE MEETING CONDUCTED BY THE EXAMINER TO CALL WHATEVER EVIDENCE WAS AVAILABLE TO THEM WITH RESPECT TO THE DUTIES AND RESPONSIBILITIES OF THE PERSONS WHO WERE SUBJECT TO THE EXAMINATION. HOWEVER, RATHER THAN CALL EVI-

DENCE, THE PARTIES AGREED ON A STATEMENT OF FACTS. THIS STATEMENT OF FACTS WAS CONCLUDED BY THE FOLLOWING WORDS:

THE PARTIES AGREE TO THE FOREGOING STATEMENT OF FACTS AND REQUEST THE BOARD TO MAKE A DETERMINATION AS TO THE STATUS OF THE PERSONS IN DISPUTE UPON THE BASIS OF THE FOREGOING.

4. IN ARRIVING AT ITS DECISION OF MAY 4, 1971, THE BOARD CONSIDERED THE STATEMENT OF FACTS AND STATED IN PART AS FOLLOWS:

2. IT IS READILY APPARENT FROM THE EVIDENCE CONTAINED IN THE AGREED STATEMENT OF FACTS THAT BOTH THE OFFICE OF DUPLICATING SERVICES AND THE COMPUTER CENTRE PERFORM FUNCTIONS WHICH ARE CONFIDENTIAL IN MATTERS RELATING TO LABOUR RELATIONS. HOWEVER, NO DISTINCTION IS MADE BETWEEN THE VARIOUS OCCUPATIONAL CLASSIFICATIONS WHO ARE EMPLOYED IN THE TWO DEPARTMENTS AND THERE IS ACCORDINGLY NOTHING BEFORE US WHICH WOULD ENABLE US TO DETERMINE WHETHER ANY OF THE PERSONS EMPLOYED IN THOSE DEPARTMENTS ARE NOT INVOLVED WITH SUCH CONFIDENTIAL FUNCTIONS. WE THEREFORE MUST FIND THAT THE APPLICANT HAS FAILED TO ADDUCE THE NECESSARY EVIDENCE TO PERMIT THE BOARD TO FIND THAT ALL PERSONS EMPLOYED IN THE TWO DEPARTMENTS ARE NOT EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS.

5. THE EFFECT OF THE APPLICANT'S LETTER OF JUNE 1 IS TO REPUDIATE ITS AGREEMENT AS CONTAINED IN THE STATEMENT OF FACTS WHICH WAS SIGNED BY EACH OF THE PARTIES.

6. IN VIEW OF THE FACT THAT THE PARTIES HAD FULL OPPORTUNITY TO CALL WHATEVER EVIDENCE WAS AVAILABLE TO THEM AT THE HEARING CONDUCTED BY THE EXAMINER IN ACCORDANCE WITH THE BOARD'S DIRECTION OF APRIL 1, 1971 AND THE FACT THAT THERE IS NO ALLEGATION THAT NEW EVIDENCE IS NOW AVAILABLE WHICH WAS NOT AVAILABLE AT THE TIME OF THE EXAMINER'S INQUIRY, THE BOARD IS OF THE VIEW THAT THERE IS NO JUSTIFICATION FOR GIVING THE PARTIES A FURTHER OPPORTUNITY TO CALL ADDITIONAL EVIDENCE IN THIS MATTER. SINCE THE DECISION OF THE BOARD OF MAY 4, 1971 WAS BASED UPON THE AGREED STATEMENT OF FACTS, THE BOARD THEREFORE IS NOT PREPARED TO PERMIT ONE OF THE PARTIES TO UNILATERALLY REPUDIATE THE AGREEMENT AND ACCORDINGLY THE BOARD DOES NOT DEEM IT ADVISABLE TO VARY OR REVOKE ITS DECISION OF MAY 4, 1971 IN THIS MATTER.

7. THE REQUEST OF THE APPLICANT IS THEREFORE DENIED.

18666-70-U: TORONTO MAILERS' UNION, No. 5 (COMPLAINANT) v. TORONTO STAR LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND O. HODGES.

APPEARANCES AT THE HEARING: J. A. RYDER FOR THE COMPLAINANT, D.J.M. BROWN AND D. M. BEATTY FOR THE RESPONDENT.

DECISION OF THE BOARD: JUNE 21, 1971.

1. THIS IS A COMPLAINT UNDER SECTION 65 OF THE LABOUR RELATIONS ACT WHEREIN THE BOARD, BY ITS DECISION DATED APRIL 21, 1971, EXPRESSED ITS VIEWS CONCERNING THE PROBATIVE VALUE OF THE RESPONDENT'S EVIDENCE IF THE RESPONDENT FAILED TO IDENTIFY THE INFORMANT OR CALL THE INFORMANT TO TESTIFY ON BEHALF OF THE RESPONDENT. AT THE HEARING ON JUNE 16, 1971, THE RESPONDENT REQUESTED THAT A PORTION OF THE PROCEEDINGS BE CONDUCTED IN CAMERA. THE RESPONDENT ADVISED THE BOARD THAT IT WAS PREPARED TO DISCLOSE THE IDENTITY OF THE INFORMANT AND TO CALL THE INFORMANT TO TESTIFY IN THE PRESENCE OF COUNSEL FOR THE COMPLAINANT BUT ASKED THE BOARD TO EXCLUDE THE COMPLAINANT AND MR. FERGUSON WHO IS THE AGGRIEVED PERSON IN THIS MATTER. THE RESPONDENT TOOK THE POSITION THAT IN VIEW OF CERTAIN ALLEGED ACTS OF VIOLENCE AND INTIMIDATION WHICH SURROUNDED THE STRIKE THAT THE COMPLAINANT HAS CONTINUED TO ENGAGE IN FOR THE PAST SEVERAL YEARS THAT THE INFORMANT WAS FEARFUL OF WHAT MIGHT TRANSPIRE IF HIS IDENTITY WAS DISCLOSED AND FOR THESE REASONS THE RESPONDENT REQUESTED THAT HIS IDENTITY BE KEPT SECRET FROM THE COMPLAINANT AND WOULD REQUIRE COUNSEL FOR THE COMPLAINANT TO UNDERTAKE NOT TO DISCLOSE THE INFORMANT'S IDENTITY. THE RESPONDENT ALSO ARGUED THAT COUNSEL FOR THE COMPLAINANT COULD CROSS-EXAMINE THE INFORMANT CONCERNING CONVERSATIONS HE HAD WITH THE RESPONDENT'S OFFICIAL AND THAT SUCH EVIDENCE WOULD MERELY BE CORROBORATIVE OF EVIDENCE TO BE GIVEN BY SUCH OFFICIAL TO JUSTIFY THE BONA FIDES OF ACTION TAKEN BY THE OFFICIAL IN THE DISCHARGE OF MR. FERGUSON. IT WAS THEREFORE ARGUED THAT COUNSEL FOR THE COMPLAINANT DIDN'T REQUIRE INSTRUCTIONS FROM THE COMPLAINANT IN ORDER TO CONDUCT A FULL CROSS-EXAMINATION.

2. THE COMPLAINANT OPPOSED THE RESPONDENT'S REQUEST.

3. THE BOARD IS NOT PREPARED TO ACCEDE TO THE RESPONDENT'S REQUEST IN THIS MATTER. IT IS NOT THE PRACTICE OF THE BOARD TO HOLD HEARINGS IN CAMERA. ALL HEARINGS CONDUCTED BY THE BOARD ARE PUBLIC HEARINGS. WHILE THERE MAY BE INSTANCES WHERE HEARINGS CAN PROPERLY BE HELD IN CAMERA THEREBY EXCLUDING THE PUBLIC FROM SUCH HEARINGS IN ORDER TO PROTECT PERSONS FROM SCANDAL, ETC., WE ARE OF THE VIEW THAT SUCH IS NOT THE SITUATION IN THIS CASE. THE RESPONDENT IN THIS MAT-

TER DOES NOT WANT TO DISCLOSE THE IDENTITY OF THE INFORMANT TO THE COMPLAINANT OR TO MR. FERGUSON, THE PERSON ON WHOSE BEHALF THIS COMPLAINT HAS BEEN BROUGHT. APART FROM ANY OTHER CONSIDERATION, WE ARE OF THE VIEW THAT SECTION 75(9) OF THE ACT WOULD PRECLUDE THE BOARD FROM ACCEDING TO THE RESPONDENT'S REQUEST IN THIS MATTER. THAT SECTION OF THE ACT REQUIRES THAT THE BOARD GIVE "FULL OPPORTUNITY TO THE PARTIES TO ANY PROCEEDINGS TO PRESENT THEIR EVIDENCE AND TO MAKE THEIR SUBMISSIONS". TO EXCLUDE ONE OF THE PARTIES AS REQUESTED BY THE RESPONDENT IN THIS MATTER WOULD BE CONTRARY TO THE PURPOSE AND INTENT OF SECTION 75(9) AND THE BOARD IS OF THE VIEW THAT IT HAS NO SUCH JURISDICTION UNDER THE ACT.

4. A SIMILAR SITUATION AROSE IN RE FAIRFIELD MODERN DAIRY LIMITED AND THE MILK CONTROL BOARD OF ONTARIO 1942 O.W.N. 579. IN THAT CASE, THE COURT HELD THAT TO REFUSE TO PERMIT ONE OF THE PARTIES TO KNOW EVIDENCE IN SUPPORT OF THE CHARGE AGAINST IT IS TO DENY THAT PARTY THE OPPORTUNITY OF A REAL HEARING. ON THE FACTS OF THE INSTANT CASE, EVEN THOUGH THE RESPONDENT IS PREPARED TO DIVULGE THE IDENTITY OF THE INFORMANT TO COUNSEL FOR THE COMPLAINANT, SUCH PROCEDURE WOULD NOT BE SUFFICIENT FOR COUNSEL FOR THE COMPLAINANT TO OBTAIN PROPER INSTRUCTIONS WITH RESPECT TO CROSS-EXAMINATION OR PERMIT THE COMPLAINANT TO CALL ANY EVIDENCE TO REBUT THE RESPONDENT'S EVIDENCE IN THIS MATTER. COUNSEL IS NOT A PARTY TO THESE PROCEEDINGS BUT IS MERELY THE AGENT OF THE PARTY AND AS AGENT HAS NO AUTHORITY TO REFUSE TO MAKE FULL DISCLOSURE TO HIS CLIENT.

5. IF MR. FERGUSON HAD BEEN THE COMPLAINANT HIMSELF AND HAD ACTED ON HIS OWN BEHALF, WE WOULD HAVE TO REQUIRE THE HEARING TO BE CONDUCTED IN HIS ABSENCE IF WE WERE TO ACCEDE TO THE RESPONDENT'S REQUEST. SUCH A PROCEDURE, OF COURSE, IS REPUGNANT TO THE RULES OF NATURAL JUSTICE.

6. APART FROM ANY OTHER CONSIDERATION, EVEN IF WE WERE TO EXCLUDE THE COMPLAINANT AND MR. FERGUSON FROM THE HEARING ROOM THERE WOULD BE NOTHING TO PREVENT THEM FROM KEEPING THE ENTRANCE TO THE HEARING ROOM UNDER SURVEILLANCE IN ORDER TO ASCERTAIN THE IDENTITY OF THE INFORMANT SINCE THE HEARING IN THIS MATTER IS BEING CONDUCTED IN A PUBLIC BUILDING. AGAIN, TO ACCEDE TO THE RESPONDENT'S REQUEST WOULD REQUIRE THAT THE BOARD PREJUDGE THE ALLEGATIONS MADE BY THE RESPONDENT AND CONCLUDE THAT THEY ARE OF SUCH A NATURE THAT IT WOULD BE NECESSARY FOR THE BOARD TO AFFORD THE PROTECTION TO THE INFORMANT THAT HAS BEEN REQUESTED. EVEN IF SUCH PROCEDURE COULD BE ADOPTED BY THE BOARD, THERE IS NOTHING BEFORE US IN THIS CASE WHICH WOULD CAUSE US TO CONCLUDE THAT THE EXTRAORDINARY PROCEDURE ADVOCATED WOULD BE NECESSARY IN THE CIRCUMSTANCES IN THIS CASE.

7. FOR THE FOREGOING REASONS, THE BOARD DENIES THE RESPONDENT'S REQUEST AND DIRECTS THAT THIS MATTER BE LISTED FOR CONTINUATION OF HEARING ON A DATE TO BE FIXED BY THE REGISTRAR.

516-71-R: READY-MIX, BUILDING SUPPLY, HYDRO & CONSTRUCTION DRIVERS, WAREHOUSEMEN & HELPERS TEAMSTERS LOCAL UNION No. 230 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) v. ARMSTRONG BROTHERS COMPANY LIMITED (RESPONDENT).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN AND BOARD MEMBERS J. D. BELL AND P. J. O'KEEFFE.

APPEARANCES AT THE HEARING: I.J. THOMSON, J. PAYNE AND M. VILLENAUVE FOR THE APPLICANT; B. BURKART AND D. FRYZUK FOR THE RESPONDENT.

DECISION OF THE BOARD: JUNE 24, 1971.

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2. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

3. HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN ROCK CRUSHING AT THE QUARRY OF THE RESPONDENT IN THE TOWNSHIP OF GLOUCESTER, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. HAVING REGARD TO THE REPRESENTATIONS OF THE RESPONDENT CONCERNING THE ALLEGED BUILD-UP OF THE PRESENT WORK FORCE AT THE QUARRY, WE ARE SATISFIED THAT MORE THAN ONE HALF OF THE PROJECTED NUMBER OF EMPLOYEES IN THE BARGAINING UNIT WERE EMPLOYED AS OF THE DATE OF THE APPLICATION AND THAT, MOREOVER, ALL CLASSIFICATIONS CURRENTLY FALLING WITHIN THE BARGAINING UNIT ARE FILLED. ACCORDINGLY, WE FIND IN THESE CIRCUMSTANCES, THAT THIS APPLICATION IS NOT PREMATURE.

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402-71-U: DRAFTSMEN'S ASSOCIATION OF ONTARIO, LOCAL 164, AMERICAN FEDERATION OF TECHNICAL ENGINEERS, A.F.L.-C.I.O., C.L.C. (APPLICANT) v. CANADIAN WESTINGHOUSE COMPANY LIMITED (RESPONDENT).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS O. HODGES AND J. E. C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: G. CHARNEY, L. H. ROSEN AND B. DEANE FOR THE APPLICANT; JOHN LINDE, GORDON WALKER, COLIN MORLEY AND JOHN MURRAY FOR THE RESPONDENT.

DECISION OF VICE-CHAIRMAN R.A. FURNESS AND BOARD MEMBER J. E. C. ROBINSON, Q.C.: JUNE 24, 1971.

1. THIS IS AN APPLICATION FOR CONSENT TO INSTITUTE A PROSECUTION OF THE RESPONDENT. THE APPLICANT HAS ALLEGED THAT THE RESPONDENT VIOLATED SECTION 12 OF THE LABOUR RELATIONS ACT. IT IS THE POSITION OF THE APPLICANT THAT THE RESPONDENT HAS NOT BARGAINED IN GOOD FAITH AND MADE EVERY REASONABLE EFFORT TO MAKE A COLLECTIVE AGREEMENT.

2. MR. L. H. ROSEN, THE CANADIAN ORGANIZER OF THE AMERICAN FEDERATION OF TECHNICAL ENGINEERS, AND MR. A. J. SEARS, A DRAFTSMAN IN THE EMPLOY OF THE RESPONDENT AND A MEMBER OF THE APPLICANT'S NEGOTIATING COMMITTEE, WERE CALLED AS WITNESSES BY THE APPLICANT. THE RESPONDENT DID NOT CALL ANY WITNESSES.

3. THE EVIDENCE REVEALED THAT THE APPLICANT SERVED NOTICE ON THE RESPONDENT OF ITS DESIRE TO NEGOTIATE A RENEWAL WITH MODIFICATIONS OF THE COLLECTIVE AGREEMENT BETWEEN THEM. THE APPLICANT AND THE RESPONDENT HELD MEETINGS ON APRIL 7, APRIL 29 AND MAY 3, 1971. ON MAY 10, 1971, THE APPLICANT APPLIED TO THE MINISTER OF LABOUR FOR THE APPOINTMENT OF A CONCILIATION OFFICER.

4. THE FIRST MEETING BETWEEN THE PARTIES ON APRIL 7, 1971, WAS CONVENED BY MUTUAL AGREEMENT. BOTH OF THE PARTIES WERE REPRESENTED BY COMMITTEES. THE APPLICANT'S COMMITTEE WAS LED BY MR. L. H. ROSEN AND THE RESPONDENT'S COMMITTEE WAS HEADED BY A MR. G. B. WALKER, THE RESPONDENT'S UNION RELATIONS' MANAGER. AT THE FIRST MEETING THE APPLICANT SUBMITTED A PRE-NEGOTIATIONS MEMORANDUM OF UNDERSTANDING TO THE RESPONDENT. THIS MEMORANDUM CONTAINED FOURTEEN POINTS WHICH DEALT ESSENTIALLY WITH SUCH MATTERS AS ALTERNATE MEMBERS OF COMMITTEES, RECESSES DURING NEGOTIATIONS, ADJOURNMENT OF NEGOTIATIONS, EMPLOYEES ON THE NEGOTIATING COMMITTEE AND ARRANGING MEETINGS SO THAT THESE EMPLOYEES SHOULD NOT SUFFER LOSS OF EARNINGS, SCHEDULING AND LOCATION OF BARGAINING SESSIONS, THE USE OF A TAPE-RECORDER FOR RECORDING THE BARGAINING SESSIONS AND PROCEDURE OF NEGOTIATION.

5. THERE WAS SOME DISCUSSION OF THIS MEMORANDUM. THE RESPONDENT AGREED TO SOME OF THE POINTS CONTAINED IN THE MEMORANDUM, SUCH AS ALTERNATE MEMBERS AND EVENING MEETINGS. SOME OTHER POINTS IN THE

MEMORANDUM WERE VIEWED BY THE RESPONDENT AS HAVING SOME MERIT. HOWEVER, THE RESPONDENT REFUSED TO AGREE TO THE USE OF THE TAPE-RECORDER AT BARGAINING SESSIONS ON THE GROUND THAT THIS WOULD LIMIT THE FRANKNESS OF DISCUSSIONS. THE RESPONDENT REFUSED TO SIGN THIS MEMORANDUM AND IT APPEARS THAT THE APPLICANT DID NOT PURSUE THE SIGNING OF THE MEMORANDUM FURTHER. COUNSEL FOR THE APPLICANT CONCEDED THAT THE RESPONDENT WAS UNDER NO OBLIGATION TO SIGN THIS MEMORANDUM.

6. THE APPLICANT THEN PRESENTED ITS PROPOSALS FOR A NEW COLLECTIVE AGREEMENT AND THE RESPONDENT'S COMMITTEE RETIRED FOR APPROXIMATELY ONE HOUR TO STUDY THESE PROPOSALS. THE EFFECT OF THESE PROPOSALS WAS TO SUBSTANTIALLY REWRITE THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES WHICH HAD BEEN THE PRODUCT OF TWENTY YEARS OF COLLECTIVE BARGAINING. MR. WALKER INFORMED THE APPLICANT THAT IT WAS A LITTLE TOO AMBITIOUS IN ITS PRESENTATION AND DEMANDS AND REQUESTED THE APPLICANT TO EXAMINE THE EXISTING COLLECTIVE AGREEMENT AND RETURN WITH ANOTHER SUBMISSION. IT APPEARED TO BE THE VIEW OF THE RESPONDENT THAT THE TERMINOLOGY IN THE PRESENT AGREEMENT HAD BEEN SATISFACTORY IN THE PAST AND THAT THE APPLICANT WAS SIMPLY PROPOSING MANY CHANGES SIMPLY FOR THE SAKE OF CHANGE. IN PARTICULAR, THE RESPONDENT TOOK GREAT EXCEPTION TO A PROPOSAL BY THE APPLICANT TO ALTER THE GEOGRAPHIC DESCRIPTION CONTAINED IN THE BARGAINING UNIT. IN OUR OPINION, THIS CHANGE SUGGESTED BY THE APPLICANT INTRODUCES A VAGUENESS WHICH MIGHT TEND TO CREATE DISPUTES IN AN AREA WHERE THERE HAD APPARENTLY BEEN NO PROBLEMS.

7. MR. ROSEN INVITED MR. WALKER TO ASK QUESTIONS ABOUT THE PHILOSOPHY BEHIND THE APPLICANT'S PROPOSED CHANGES IN THE COLLECTIVE AGREEMENT. MR. WALKER REFUSED BECAUSE HE CLAIMED THAT HE UNDERSTOOD THE APPLICANT'S PROPOSALS. THERE WAS NO EVIDENCE BEFORE THE BOARD THAT THE APPLICANT ATTEMPTED TO EXPLAIN ITS OWN PHILOSOPHY IN THIS REGARD. HOWEVER, MR. WALKER DID SUGGEST THAT THE PARTIES IDENTIFY THE PROBLEM AREAS AND DISCUSS THEM. THE FIRST MEETING ENDED WITH A TENTATIVE DATE SET FOR A SECOND MEETING. MR. WALKER INFORMED THE APPLICANT THAT HE WAS TAKING TWO WEEKS FOR HIS VACATION AND THAT HIS COMMITTEE WOULD LOOK AT THE APPLICANT'S PROPOSALS IN HIS ABSENCE.

8. THE DATE FOR THE SECOND MEETING WAS CONFIRMED BY A REPRESENTATIVE OF THE RESPONDENT AND WAS HELD ON APRIL 29, 1971. THERE WERE FURTHER DISCUSSIONS BETWEEN THE PARTIES CONCERNING THE PRENEGOTIATIONS MEMORANDUM OF UNDERSTANDING AND THE RESPONDENT INDICATED THAT IT WAS SYMPATHETIC TO PROPOSED REGULAR MEETINGS PROVIDED PROGRESS WAS BEING MADE AT THESE MEETINGS. THE APPLICANT'S PROPOSALS WERE DISCUSSED AND MR. WALKER REITERATED THAT THE EFFECTIVENESS OF THE PRESENT COLLECTIVE AGREEMENT WAS BASED ON MANY YEARS OF EXPERIENCE AND POINTED OUT THAT THERE HAS BEEN NO GRIEVANCES UNDER THE PRESENT COLLECTIVE AGREEMENT.

9. MR. WALKER TOLD THE APPLICANT THAT THERE WERE NOT TOO MANY PROBLEM AREAS BETWEEN THE PARTIES AND THAT IT WAS ONLY NECESSARY TO DISCUSS HOLIDAYS, VACATIONS AND WAGES. HE STRONGLY ADOPTED THE VIEW THAT THE CLAUSE BY CLAUSE DISCUSSION DESIRED BY MR. ROSEN WOULD TAKE UNTIL SEPTEMBER AND THAT, IN ANY EVENT, THERE WAS NO NEED TO REWRITE THE COMPLETE AGREEMENT. THERE WAS THEN DISCUSSION OF THE APPLICANT'S PROPOSALS ON WAGE INCREASES. THE RESPONDENT OFFERED TO MAKE COUNTER-PROPOSALS ON HOLIDAYS, VACATIONS AND WAGES IF THE APPLICANT'S PROPOSED CHANGES IN THE COLLECTIVE AGREEMENT WERE FIRST SETTLED. MR. ROSEN COUNTERED THAT IF THE RESPONDENT'S OFFER ON HOLIDAYS, VACATIONS AND WAGES WAS VERY SWEET THEN THE APPLICANT MIGHT WITHDRAW ITS PROPOSED CHANGES TO THE COLLECTIVE AGREEMENT.

10. AT THIS POINT THE PARTIES APPEARED TO BE DEADLOCKED AND THERE WAS SOME DISCUSSION ABOUT SEEKING THE SERVICES OF A CONCILIATION OFFICER. HOWEVER, A THIRD MEETING BETWEEN THE PARTIES WAS HELD ON MAY 3, 1971. THIS MEETING WAS SHORT AND WAS ADJOURNED AFTER IT BECAME APPARENT THAT THE PARTIES WERE STILL APART ON THE MATTERS UNDER DISCUSSION. HOWEVER, MR. WALKER SAID THAT THE RESPONDENT WOULD TAKE ALL MATTERS UNDER ADVISEMENT AND IT WAS UNDERSTOOD THAT THE RESPONDENT MIGHT CONTACT THE APPLICANT IF A FOURTH MEETING WAS REQUIRED. THE PARTIES WERE CLEARLY APART ON THE QUESTION OF WHETHER FIRST TO RESOLVE THE NON-ECONOMIC MATTERS OR THE ECONOMIC MATTERS. NO TIME LIMIT WAS SET FOR THE RESPONDENT TO CONTACT THE APPLICANT ABOUT A FOURTH MEETING. ON MAY 10, 1971 THE APPLICANT APPLIED TO THE MINISTER OF LABOUR FOR THE APPOINTMENT OF A CONCILIATION OFFICER.

11. IN OUR OPINION, THE PARTIES MET AND BARGAINED. THE BARGAINING WAS HARD AND BOTH SIDES SOUGHT TO USE THEIR APPROACH TO THE CONSUMMATION OF A NEW COLLECTIVE AGREEMENT. THE FACT THAT A COLLECTIVE AGREEMENT WAS NOT MADE BECAUSE THE PARTIES MAY HAVE BEEN FIRM AND SOMEWHAT UNYIELDING IS NOT EVIDENCE OF BAD FAITH OR OF A FAILURE TO MAKE EVERY REASONABLE EFFORT TO MAKE A COLLECTIVE AGREEMENT, SEE REGINA, EX PARTE HEARN V. NORFOLK GENERAL HOSPITAL (1957) 119 C.C.C. 290. THERE WAS NO SUGGESTION OF ANY DELAYS AT ALL IN ARRANGING MEETINGS AND THE ATTITUDE OF THE RESPONDENT WAS CERTAINLY NO LESS FLEXIBLE THAN THE ATTITUDE OF THE APPLICANT.

12. HAVING REGARD TO THE EVIDENCE BEFORE US CONCERNING THE OVERALL CONDUCT OF THE PARTIES, WE ARE UNABLE TO FIND THAT THE RESPONDENT HAS FAILED TO BARGAIN IN GOOD FAITH AND MAKE EVERY REASONABLE EFFORT TO MAKE A COLLECTIVE AGREEMENT.

13. IN THE RESULT, THEREFORE, WE DISMISS THIS APPLICATION.

DECISION OF BOARD MEMBER O. HODGES: JUNE 24, 1971.

1. I DISSENT.

2. THERE IS NO EVIDENCE THAT THE RESPONDENT EMPLOYER MADE WHAT MIGHT BE CHARACTERIZED AS AN OFFER. THERE WAS NO COUNTER-PROPOSAL THAT COULD HAVE BEEN PUT TO THE MEMBERSHIP OF THE UNION AS A SETTLEMENT. WHILE THE EMPLOYER ATTEMPTED TO NARROW THE AREA FOR BARGAINING, THERE WAS NO ACTUAL BASIS FOR CONSIDERATION OF A PACKAGE OFFERED TO THE UNION BARGAINING COMMITTEE.

3. THE PROCESS OF COLLECTIVE BARGAINING DEMANDS MORE THAN REJECTION IF S. 12 IS TO BE SERVED. THE EMPLOYER IN THIS CASE HAD TIME TO FORMULATE AN OFFER IN MEASURABLE CONCRETE TERMS OF HOLIDAYS, VACATIONS AND WAGES, AND IN MY VIEW THAT SHOULD HAVE BEEN DONE WITHIN THE SPACE OF TIME ENCOMPASSED BY THE THREE MEETINGS THAT WERE HELD.

4. MY FINDING IS THAT THE RESPONDENT EMPLOYER FAILED TO BARGAIN IN GOOD FAITH AND MAKE EVERY REASONABLE EFFORT TO MAKE A COLLECTIVE AGREEMENT. I WOULD THEREFORE ALLOW THE APPLICANT THE RELIEF SOUGHT AND GRANT CONSENT TO INSTITUTE PROSECUTION OF THE RESPONDENT FOR A VIOLATION OF S. 12 OF THE LABOUR RELATIONS ACT.

370-71-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS LOCAL UNION 1669 (APPLICANT) V. V. K. MASON CONSTRUCTION LTD. (RESPONDENT).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

DECISION OF THE BOARD: JUNE 29, 1971.

...

5. THE BOARD FURTHER FINDS THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 92 OF THE LABOUR RELATIONS ACT.

...

7. THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER REVEALS THAT WILLIAM JOHNSON WAS ON THE DATE OF THE MAKING OF THIS APPLICATION FOR CERTIFICATION IN THE EMPLOY OF THE RESPONDENT AS A CARPENTER FOREMAN. ON THIS DAY THERE WERE TWO CARPENTERS UNDER HIS DIRECTION AND SUPERVISION. WALTER GELMYCH, CLASSIFIED BY THE RESPONDENT AS A SUPERINTENDENT, WAS HIS IMMEDIATE SUPERVISOR. WHEN JOHNSON WAS FIRST EMPLOYED BY THE RESPONDENT, HE WAS TOLD THAT HIS JOB WAS TO LOOK AFTER THE CARPENTERS. HE DOES NOT HANDLE COMPOSITE CREWS ALTHOUGH HE CO-OPERATES WITH THE LABOUR FOREMAN.

8. WHILE JOHNSON CALLS THE APPLICANT FOR ANY CARPENTERS THAT ARE REQUIRED, HE DOES SO AFTER HE HAS DISCUSSED THE SITUATION WITH GELMYCH. THE FINAL DECISION TO HIRE ADDITIONAL CARPENTERS IS MADE BY GELMYCH AND JOHNSON CARRIES OUT THE DECISION. HOWEVER, JOHNSON INTERVIEWS THE PROSPECTIVE EMPLOYEES ABOUT THEIR QUALIFICATIONS, STARTS THEM TO WORK AND ASSIGNS THEM TO THEIR JOBS.

9. JOHNSON WAS NOT ALTOGETHER CERTAIN WHETHER HE HAS THE AUTHORITY TO FIRE EMPLOYEES. IT WAS CLEAR, HOWEVER, THAT IN ANY EVENT, HE WOULD HAVE TO DISCUSS THE SITUATION WITH HIS SUPERVISOR BEFORE HE COULD TAKE ANY ACTION. A SIMILAR SITUATION APPLIES TO LAY-OFFS. IN THE EVENT THAT ONE OF HIS CREW DID NOT DO HIS WORK PROPERLY, JOHNSON WOULD BRING THE MATTER TO THE ATTENTION OF THE SUPERVISOR AND ASK FOR INSTRUCTIONS CONCERNING WHAT ACTION HE SHOULD TAKE.

10. JOHNSON WORKS MANUALLY, DOES LAY-OUT WORK AND DIRECTS OTHERS ON THE JOB. ON THE DATE OF THE MAKING OF THIS APPLICATION HE HAD HIS CARPENTER'S TOOLS ON THE JOB AND ESTIMATED THAT HE SPENT SEVENTY-FIVE PER CENT OF HIS TIME ON LAY-OUT WORK, FIFTEEN PER CENT INSTRUCTING AND SUPERVISING OTHERS AND THE REMAINING TEN PER CENT OF HIS TIME WORKING WITH THE TOOLS OF HIS TRADE. THE LAY-OUT WORK IS FIRST DISCUSSED WITH THE SUPERVISOR AND A DECISION ARRIVED AT BEFORE JOHNSON DOES THE LAY-OUT WORK.

11. THE TIME RECORDS OF THE BOTH JOHNSON AND HIS CREW ARE KEPT BY JOHNSON AND ARE TURNED OVER BY HIM TO THE SUPERINTENDENT. JOHNSON AND HIS CREW WORK THE SAME HOURS. WHEN WORK IS STOPPED BECAUSE OF BAD WEATHER, JOHNSON DISCUSSES THE SITUATION WITH THE SUPERINTENDENT AND IT IS THEN DECIDED WHETHER THE MEN ARE TO CONTINUE WORKING. IF THERE IS NO WORK FOR THE MEN, JOHNSON ADVISES THEM.

12. JOHNSON IS PAID FORTY CENTS AN HOUR MORE THAN A REGULAR CARPENTER. THIS AMOUNT IS DETERMINED BY UNION REGULATION OR THE AGREEMENT IN EFFECT IN THE AREA WHERE THE JOB IS LOCATED. HE IS NOT PAID WHEN HE LOSES TIME DUE TO BAD WEATHER. HOWEVER, HE HAS WORKED OVERTIME AND HAS MADE HIS OWN DECISION AS TO WHETHER HE SHOULD WORK OVERTIME.

13. JOHNSON'S FUNCTIONS OF PERFORMING LAY-OUT WORK, WORKING WITH THE TOOLS OF HIS TRADE AND GIVING INSTRUCTIONS AND DIRECTIONS TO HIS CREW OF CARPENTERS ARE ESSENTIALLY THOSE OF A WORKING FOREMAN IN THE CONSTRUCTION INDUSTRY AND WHO IS NORMALLY INCLUDED IN A BARGAINING UNIT DETERMINED BY THE BOARD. HIS FUNCTION WITH RESPECT TO HIRING, LAY-OFF, POOR WORKMANSHIP OF AN EMPLOYEE AND FIRING EMPLOYEES IS LIMITED TO DISCUSSING THESE MATTERS WITH GELMYCH AND THEN ACTING AS A CONDUIT FOR THE LATTER'S DECISION.

14. HIS ONLY RESPONSIBILITIES ARE THE INTERVIEWING OF PROSPECTIVE EMPLOYEES SENT BY THE APPLICANT, THE KEEPING OF TIME CARDS AND HIS DECISION THAT HE SHOULD WORK OVERTIME ON OCCASIONS. WHILE JOHNSON INTERVIEWS PROSPECTIVE EMPLOYEES THERE IS NO EVIDENCE THAT HE HAS THE AUTHORITY TO PREVENT SUCH EMPLOYEES FROM BEING HIRED WITHOUT CONSULTING GELMYCH. IN VIEW OF THE SMALL NUMBER OF CARPENTERS ON THE JOB AND THE FACT THAT GELMYCH IS NORMALLY AVAILABLE ON THE JOB, THE TASK OF KEEPING TIME SHEETS APPEARS TO BE IN REALITY LITTLE MORE THAN A MINOR CLERICAL ACT. JOHNSON'S DECISION TO WORK OVERTIME APPEARS TO INDICATE A MEASURE OF DISCRETION ON HIS PART. HOWEVER, WHEN THIS IS CONSIDERED IN CONJUNCTION WITH ALL OF THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER, IT APPEARS THAT THIS RELATES TO LAY-OUT WORK THAT HE IS ABLE TO DO WHEN THE CREW IS NOT ON THE JOB.

15. HAVING REGARD TO ALL OF THE EVIDENCE BEFORE THE BOARD, WE FIND THAT WILLIAM JOHNSON NEITHER EXERCISES MANAGERIAL FUNCTIONS NOR IS EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT.

16. FOR THE PURPOSES OF CLARITY, THE BOARD DECLARES THAT WILLIAM JOHNSON IS AN EMPLOYEE INCLUDED IN THE BARGAINING UNIT DEFINED IN PARAGRAPH SIX HEREOF.

. . .

18. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

604-71-U: DOMINION GLASS COMPANY LIMITED (APPLICANT) V. THOSE PERSONS NAMED IN SCHEDULE "A" ATTACHED HERETO (RESPONDENTS).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS P.J. O'KEEFFE AND H. IRWIN.

APPEARANCES AT THE HEARING: F.G. HAMILTON, J. MURRAY AND J. CHALONER FOR THE APPLICANT; NO ONE APPEARING FOR GAETON CHAREST, AUGUSTO CLAZZER, ALFRED HAY, KITTY JOSEPH, EDWARD LONGSON, LAVERNE PARENT AND MARIO VELLUTO ALTHOUGH DULY SERVED; GARY CHERTKOFF FOR THE REMAINING RESPONDENTS.

DECISION OF THE BOARD: JUNE 30, 1971.

1. THIS IS AN APPLICATION UNDER SECTION 67 OF THE LABOUR RELATIONS ACT ALLEGING THAT CERTAIN EMPLOYEES ENGAGED IN A STRIKE THAT IS UNLAWFUL AND REQUESTING A DECLARATION THAT THE STRIKE IS UNLAWFUL.

COUNSEL FOR THE APPLICANT ADVISED THAT THE APPLICANT WAS NOT PROCEEDING AGAINST BEVERLY HENDERSON, DAVE KELLNER AND GARY SMULDERS, AND ACCORDINGLY THE APPLICATION WITH RESPECT TO THOSE PERSONS IS DISMISSED.

2. AT THE OUTSET COUNSEL FOR THE RESPONDENT RAISED A PRELIMINARY OBJECTION TO THE FORM OF THE APPLICATION AND SUBMITTED THAT THE APPLICANT DID NOT COMPLY WITH FORM 23 OF THE BOARD'S RULES OF PROCEDURE AND PARTICULARLY THAT IT OMITTED THE FIRST SENTENCE CONTAINED IN THAT FORM WHICH PROVIDES:

"THE APPLICANT APPLIES TO THE ONTARIO LABOUR RELATIONS BOARD FOR A DECLARATION THAT A STRIKE ENGAGED IN BY EMPLOYEES OF THE APPLICANT IS UNLAWFUL."

WE DISMISSED THIS PRELIMINARY OBJECTION BECAUSE WE WERE SATISFIED THAT THE APPLICATION WAS SUFFICIENT IN ITS FORM TO INDICATE THE PURPOSE OF THE APPLICATION, THE RELIEF CLAIMED AND ALSO TO CONFER JURISDICTION UPON THE BOARD TO HEAR THE MATTER. ALTERNATIVELY, WE WERE OF THE OPINION THAT THE OMISSION OF THE SENTENCE IN QUESTION WAS EITHER A DEFECT IN FORM OR A TECHNICAL IRREGULARITY WHICH COULD BE CURED BY SECTION 59 OF THE BOARD'S RULES OF PROCEDURE WHICH PROVIDES AS FOLLOWS:

59. NO PROCEEDING UNDER THESE RULES IS INVALID BY REASON OF ANY DEFECT IN FORM OR OF ANY TECHNICAL IRREGULARITY.

ACCORDINGLY, WE GRANTED THE APPLICANT'S REQUEST TO AMEND THE APPLICATION BY INSERTING THE OMITTED SENTENCE.

3. HAVING REGARD TO THE EVIDENCE AND TO THE ADMISSIONS MADE, WE ARE OF THE OPINION THAT A DECLARATION SHOULD ISSUE IN THIS CASE. IT IS CLEAR THAT THE EMPLOYEES ENGAGED IN A STRIKE AFTER THE MINISTER RELEASED TO THE PARTIES A NOTICE THAT HE DID NOT DEEM IT ADVISABLE TO APPOINT A CONCILIATION BOARD BUT BEFORE THE MANDATORY WAITING PERIOD REQUIRED UNDER SECTION 54(2) OF THE LABOUR RELATIONS ACT. COUNSEL FOR THE RESPONDENTS REQUESTED THAT THE BOARD EXERCISE ITS DISCRETION AND REFUSE TO GRANT A DECLARATION ON THE BASIS THAT SOME EMPLOYEES WERE PROVOKED INTO ENGAGING IN THIS UNLAWFUL STRIKE. WHILE EVIDENCE OF PROVOCATION MAY BE A FACTOR WHICH THE BOARD MIGHT CONSIDER IN REFUSING TO GRANT A DECLARATION, WE ARE OF THE OPINION THAT THE EVIDENCE IN THIS CASE IS NOT SUFFICIENT TO ESTABLISH SUCH PROVOCATION.

4. ACCORDINGLY, AND FOR THE REASONS GIVEN, THE BOARD DECLARES THAT THE EMPLOYEES LISTED ON SCHEDULE "A" ATTACHED HERETO ENGAGED IN AN UNLAWFUL STRIKE CONTRARY TO SECTION 54(2) OF THE LABOUR RELATIONS ACT.

659-71-JD: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837 (COMPLAINANT) V. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 18 AND JOHN E. SMITH & SON LATH, PLASTER & ACOUSTICAL CONTRACTORS (1968) LIMITED (RESPONDENTS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: R. KOSKIE, A. M. MINSKY AND MICHAEL REILLY FOR THE COMPLAINANT; B. W. BINNING AND G. A. BECIGNEUL FOR THE RESPONDENT COMPANY AND BRAMALEA GENERAL CONTRACTING (PEEL) LIMITED; CHARLES GUAGLIANO AND THOMAS FENWICK FOR THE RESPONDENT UNION.

DECISION OF THE BOARD: JUNE 30, 1971.

. . .

2. THIS IS A COMPLAINT MADE UNDER SECTION 66 OF THE LABOUR RELATIONS ACT.

3. THE COMPLAINANT IS REQUESTING THAT THE BOARD MAKE AN INTERIM ORDER WITH RESPECT TO AN ASSIGNMENT OF WORK WHICH IS IN DISPUTE BETWEEN ITSELF AND THE RESPONDENT TRADE UNION.

4. BASED ON THE EVIDENCE ADDUCED AT THE CONSULTATION, THE BOARD FINDS THAT THE RESPONDENT COMPANY IS THE EMPLOYER OF THE EMPLOYEES WHO ARE ENGAGED IN THE PERFORMANCE OF THE WORK IN DISPUTE.

5. BASED ON THE EVIDENCE, THE BOARD IS SATISFIED THAT A STRIKE IS IMMINENT BY REASON OF THE ASSIGNMENT OF WORK WHICH IS THE SUBJECT MATTER OF THE DISPUTE.

6. HAVING CONSIDERED THE REPRESENTATIONS OF THE PARTIES, THE MAJORITY OF THE BOARD (E. BOYER DISSENTING) DEEMS IT ADVISABLE IN ALL THE CIRCUMSTANCES TO MAKE THE INTERIM ORDER SET OUT BELOW:

THE RESPONDENT JOHN E. SMITH & SON LATH,
PLASTER & ACOUSTICAL CONTRACTORS (1968)
LIMITED SHALL ASSIGN THE WORK INVOLVED
IN THE ERECTION OF TUBULAR METAL SCAFFOLD-
ING EXTENDING TO A HEIGHT IN EXCESS OF 14
FEET, WHICH SCAFFOLDING IS BEING USED ON
THE CANADA CENTRE FOR INLAND WATERS - PHASE
II CONSTRUCTION PROJECT AT BURLINGTON TO
EMPLOYEES WHO ARE REPRESENTED BY THE LA-
BOURERS' INTERNATIONAL UNION OF NORTH AMER-
ICA, LOCAL 837.

THIS ORDER SHALL BECOME EFFECTIVE FORTHWITH
AND SHALL REMAIN IN EFFECT UNTIL SUCH TIME
AS THE BOARD ISSUES A FURTHER DIRECTION.

7. BOARD MEMBER E. BOYER WOULD HAVE MADE AN INTERIM ORDER ASSIGNING THE SAID WORK IN DISPUTE TO A COMPOSITE CREW COMPOSED OF LABOURERS AND ONE CARPENTER.

8. THE COMPLAINANT IS ALSO REQUESTING THAT THE BOARD ISSUE A DIRECTION THAT THE RESPONDENT TRADE UNION AND ITS OFFICERS AND OFFICIALS OR AGENTS CEASE AND DESIST FROM DOING ANYTHING INTENDED OR LIKELY TO INTERFERE WITH THE TERMS OF THE ABOVE INTERIM ORDER.

9. THE REPRESENTATIVE OF THE RESPONDENT UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 18 GAVE AN UNDERTAKING TO THE BOARD THAT THE SAID TRADE UNION WOULD COMPLY WITH THE TERMS OF THE INTERIM ORDER PENDING THE BOARD MAKING A DIRECTION ON THE MERITS OF THE WORK ASSIGNMENT DISPUTE.

10. HAVING REGARD TO THE UNDERTAKING OF THE REPRESENTATIVE OF THE RESPONDENT TRADE UNION, THE REQUEST OF THE COMPLAINANT FOR A CEASE AND DESIST ORDER IS ADJOURNED SINE DIE ON THE UNDERSTANDING THAT SHOULD THERE BE ANY BREACH OF THE ABOVE UNDERTAKING THE MATTER WILL BE LISTED FORTHWITH FOR HEARING WITH RESPECT TO THE REQUEST FOR A CEASE AND DESIST DIRECTION.

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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING JUNE 1971

BARGAINING AGENTS CERTIFIED DURING JUNE

NO VOTE CONDUCTED

18652-70-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. MOFFATS GSW APPLIANCES LTD. (RESPONDENT) V. CANADIAN UNION OF OPERATING ENGINEERS - LOCAL 101 (INTERVENER).

UNIT: "ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND SALESMEN." (111 EMPLOYEES IN THE UNIT). (THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT ON THE DATE THE APPLICATION WAS MADE 19 PERSONS CLASSIFIED AS FOREMEN WERE NOT INCLUDED IN THE BARGAINING UNIT AND THAT 4 PERSONS CLASSIFIED AS SALESMEN WERE NOT INCLUDED IN THE BARGAINING UNIT).

63-70-R: UNION OF DRIVERS AND DOCK WORKERS OF WILSON'S TRUCK LINES LIMITED (APPLICANT) V. WILSON'S TRUCK LINES LIMITED (RESPONDENT).

UNIT: "ALL DRIVERS AND FREIGHT HANDLERS OF THE RESPONDENT, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, OWNER OPERATORS AND PART-TIME EMPLOYEES AND MAINTENANCE STAFF, AT TORONTO, SAULT STE. MARIE, PERTH AND COLBORNE." (10 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

65-70-R: LOCAL 12-L, TORONTO LITHOGRAPHERS AND PHOTOENGRAVERS INTERNATIONAL UNION (APPLICANT) V. MACDOUGALL & POLLARD LIMITED (RESPONDENT).

UNIT: "ALL LITHOGRAPHERS, THEIR APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

206-70-R: INTERNATIONAL BROTHERHOOD OF PAINTERS & ALLIED TRADES LOCAL UNION 1891 (APPLICANT) V. 229704 CONTRACTING LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL PAINTERS AND PAINTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF

OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (24 EMPLOYEES IN THE UNIT).

(SEE DECISION [1971] OLRB REP. 337).

333-71-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. INTRUSION-PREPAK LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN THE TOWNSHIPS OF LORNE AND DRURY IN THE DISTRICT OF SUDBURY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, OFFICE AND SALES STAFF." (21 EMPLOYEES IN THE UNIT). (HAVING CONSIDERED THE REPRESENTATIONS OF THE PARTIES).

340-71-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION NO. 647 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. SWISS CHALET BAR-B-Q A DIVISION OF HARVEY'S FOODS LIMITED (RESPONDENT).

UNIT: "ALL COMMISSION DRIVERS OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT DISPATCHERS, PERSONS ABOVE THE RANK OF DISPATCHER, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (9 EMPLOYEES IN THE UNIT).

370-71-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS LOCAL UNION 1669 (APPLICANT) V. V. K. MASON CONSTRUCTION LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF THUNDER BAY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

(SEE DECISION [1971] OLRB REP. 352).

399-71-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE HYDRO-ELECTRIC COMMISSION OF THE TOWNSHIP OF GLOUCESTER (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN THE TOWNSHIP OF GLOUCESTER, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND CLERICAL STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (16 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

410-71-R: LUMBER AND SAWMILL WORKERS UNION, LOCAL 2693 OF THE UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT) V. V. K. MASON CONSTRUCTION LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF KENORA, INCLUDING THE PATRICIA PORTION, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

418-71-R: UNITED CEMENT, LIME AND GYPSUM WORKERS INTERNATIONAL UNION, A.F.L., C.I.O., C.L.C. (APPLICANT) V. BRANTFORD CONCRETE PIPE COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF BRANTFORD, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (16 EMPLOYEES IN THE UNIT).

419-71-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE KENORA BOARD OF EDUCATION (RESPONDENT).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES IN THE EMPLOY OF THE RESPONDENT AT KENORA, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR AND EMPLOYEES PRESENTLY COVERED BY A COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 191." (23 EMPLOYEES IN THE UNIT).

422-71-R: LUMBER AND SAWMILL WORKERS UNION, LOCAL 2693 OF THE UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT) V. V. K. MASON CONSTRUCTION LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF THUNDER BAY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

428-71-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. DELAIR FOOD LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS OPERATIONS AT THE CANADA STARCH COMPANY LIMITED AT CARDINAL, SAVE AND EXCEPT CHEF SUPERVISOR AND CAFETERIA MANAGER, PERSONS ABOVE THE RANK OF CHEF SUPERVISOR AND CAFETERIA MANAGER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (3 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

438-71-R: LOCAL UNION 115, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (APPLICANT) V. ELECTRONIC CONTROLS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BELLEVILLE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, SALES STAFF, ENGINEERING STAFF, ENGINEERING TECHNICIANS, DRAFTSMEN, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (53 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

(SEE DECISION [1971] OLRB REP. 319).

453-71-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. CONTINENTAL CAN COMPANY OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT TRENTON, SAVE AND EXCEPT PRODUCTION SUPERVISORS, PERSONS ABOVE THE RANK OF PRODUCTION SUPERVISOR, AND OFFICE, CLERICAL AND SALES STAFF." (6 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT PERSONS CLASSIFIED BY THE RESPONDENT AS FIELD REPRESENTATIVES AND GENERAL CLERK ARE NOT EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT).

454-71-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. SANCO CONSTRUCTION (LONDON) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING AT OR OUT OF ITS BATCHING PLANT AND SHOPS AT LONG LAKE ROAD AND LOCKERBY MINE SITE, SUDBURY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (18 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

458-71-R: TEXTILE WORKERS UNION OF AMERICA, AFL-CIO-CLC (APPLICANT) V. ROBERT SOPER LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND HOMEWORKERS." (38 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

459-71-R: SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL UNION 540 (APPLICANT) V. C/S CONSTRUCTION SPECIALTIES LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT MISSISSAUGA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (24 EMPLOYEES IN THE UNIT).

(SEE DECISION [1971] OLRB REP. 343).

462-71-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION NO. 647 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. ANDERSEN'S COFFEE CARAVAN (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR." (3 EMPLOYEES IN THE UNIT).

463-71-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. SANTINI MENCARELLI CONSTRUCTION (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WELLINGTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

464-71-R: LABORERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 837 (APPLICANT) V. AGNEW-BAILLIE CONTRACTING LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WENTWORTH AND THE TOWNSHIP OF NASSAGAWEYA AND THE TOWN OF BURLINGTON IN THE COUNTY OF HALTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (8 EMPLOYEES IN THE UNIT).

474-71-R: THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA LOCAL UNION 599 (APPLICANT) V. RAM MECHANICAL CONTRACTORS LIMITED (RESPONDENT).

UNIT: "ALL PLUMBERS AND PLUMBERS' APPRENTICES, STEAMFITTERS AND STEAMFITTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF SIMCOE, THE DISTRICT OF MUSKOKA AND THE TOWNSHIPS OF RAMA, MARA AND THORAH IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (31 EMPLOYEES IN THE UNIT). (FOR THE PURPOSES OF CLARITY THE BOARD DECLARED THAT WELDERS WORKING AT THE PLUMBING AND STEAMFITTING TRADES ARE EMPLOYEES INCLUDED IN THE BARGAINING UNIT).

475-71-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. AUTO PALLETS-BOXES ONTARIO LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN THE TOWNSHIP OF EAST FLAMBOROUGH, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (23 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES).

482-71-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. ST. JOSEPH'S VILLA (RESPONDENT).

UNIT: "ALL LAY EMPLOYEES OF THE RESPONDENT AT GOVERNORS ROAD AND OVERFIELD, DUNDAS, ONTARIO SAVE AND EXCEPT PROFESSIONAL AND MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, TECHNICAL PERSONNEL, OFFICE STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (94 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

490-71-R: CHRISTIAN TRADE UNIONS OF CANADA (LOCAL 6) (APPLICANT) V. BOSCHMAN CONTRACTING LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES AND ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WENTWORTH AND THE TOWNSHIP OF NASSAGAWEYA AND THE TOWN OF BURLINGTON IN THE COUNTY OF HALTON, AND ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF WENTWORTH AND THE TOWNSHIP OF NASSAGAWEYA AND THE TOWN OF BURLINGTON IN THE COUNTY OF HALTON ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (26 EMPLOYEES IN THE UNIT).

491-71-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. CARROLL - SHARP CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

495-71-R: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNION 1687 (APPLICANT) V. DEER-MINE SERVICES LIMITED (RESPONDENT).

UNIT: "ALL ELECTRICIANS AND ELECTRICIANS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A RADIUS OF THIRTY-FIVE MILES FROM THE CITY OF SUDBURY FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

(SEE DECISION [1971] OLRB REP. 336).

496-71-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. SHOKBETON QUEBEC INCORPORATED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

503-71-R: CANADIAN BROTHERHOOD OF RAILWAY TRANSPORT AND GENERAL WORKERS (APPLICANT) V. COMMERCIAL CARTAGE (TORONTO) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, DISPATCHER AND OFFICE STAFF." (40 EMPLOYEES IN THE UNIT).

505-71-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. A. COPE & SONS LIMITED (RESPONDENT) V. TEAMSTERS LOCAL 879 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (INTERVENER) V. EMPLOYEE (OBJECTOR).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF WENTWORTH AND THE TOWNSHIP OF NASSAGAWEYA AND THE TOWN OF BURLINGTON IN THE COUNTY OF HALTON, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME ON CONSTRUCTION SITES, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER DATED APRIL 19, 1971 AND COVERING ALL TRUCK DRIVERS EMPLOYED IN THE RESPONDENT'S CONSTRUCTION DIVISION." (10 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES AND IN THE CIRCUMSTANCES OF THIS APPLICATION).

510-71-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. COMMONWEALTH CONSTRUCTION COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

515-71-R: PRINTING SPECIALTIES AND PAPER PRODUCTS UNION, LOCAL 466 (APPLICANT) V. CELLO BAGS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (41 EMPLOYEES IN THE UNIT).

521-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. SUPPA CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTRUCTION LABOURERS ENGAGED IN BUILDING PROJECTS, AND SHOP AND YARD EMPLOYEES." (8 EMPLOYEES IN THE UNIT).

539-71-R: TEAMSTERS LOCAL 879 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. LEON'S FURNITURE LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT KITCHENER, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (10 EMPLOYEES IN THE UNIT).

557-71-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. LOUIS DONOLO INC. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR

EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

563-71-R: CHRISTIAN TRADE UNIONS OF CANADA (LOCAL 6) (APPLICANT) V. G. S. WARK LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS, APPRENTICE CARPENTERS, CONSTRUCTION LABOURERS AND MACHINE OPERATORS. IT APPEARS FROM INFORMATION RECEIVED BY THE BOARD THAT THE RESPONDENT EMPLOYED ONLY A CARPENTER, A CONSTRUCTION LABOURER AND A BACK-HOE OPERATOR ON THE DATE OF THE MAKING OF THE APPLICATION. HAVING REGARD TO THE PRINCIPLE ENUNCIATED IN THE WINTER & SON CASE, OLRB, M.R., FEB. 1967, P.889 AND TO SECTION 6(1) OF THE LABOUR RELATIONS ACT, THE BOARD FURTHER FINDS THAT ALL CARPENTERS AND CARPENTERS' APPRENTICES AND ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF NIAGARA AND THE COUNTY OF HALDIMAND, AND ALL EMPLOYEES OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF NIAGARA AND THE COUNTY OF HALDIMAND ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

577-71-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. RULIFF GRASS CONST. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN PRINCE EDWARD COUNTY AND THE TOWNSHIPS OF LAKE, TUDOR, GRIMSTHORPE, MARMORA, MADOC, ELZEVR, RAWDON, HUNTINGDON, HUNGERFORD, SIDNEY, THURLOW AND TYENDINAGA IN THE COUNTY OF HASTINGS AND THE TOWNSHIPS OF PERCY, SEYMOUR, CRAMAHE, BRIGHTON AND MURRAY IN THE COUNTY OF NORTHUMBERLAND ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

581-71-R: LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837 (APPLICANT) V. VAN DER MEULEN CONSTRUCTION COMPANY LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WENTWORTH AND THE TOWNSHIP OF NASSAGAWEYA AND THE TOWN OF BURLINGTON IN THE COUNTY OF HALTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

589-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. HARGUY CONST. (1968) LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN. CONSTRUCTION LABOURERS ENGAGED IN BUILDING PROJECTS, AND SHOP AND YARD EMPLOYEES." (4 EMPLOYEES IN THE UNIT).

596-71-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. GEORGIAN INDUSTRIAL INSULATIONS (RESPONDENT).

UNIT: "ALL INSULATION MECHANICS AND INSULATION MECHANICS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF SIMCOE, THE DISTRICT OF MUSKOKA AND THE TOWNSHIPS OF RAMA, MARA AND THORAH IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

APPLICATIONS CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

158-70-R: LUMBER AND SAWMILL WORKERS' UNION, LOCAL 2537 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. WHITEFISH PALLET CO. LIMITED (RESPONDENT) V. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WHITEFISH, ONTARIO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND CLERICAL STAFF." (13 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	9
NUMBER OF PERSONS WHO CAST BALLOTS	9
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	9
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	0

299-71-R: NURSES' ASSOCIATION OTTAWA CIVIC HOSPITAL (APPLICANT) V. THE TRUSTEES OF THE OTTAWA CIVIC HOSPITAL (RESPONDENT).

UNIT: "ALL REGISTERED OR GRADUATE NURSES EMPLOYED IN A NURSING OR TEACHING CAPACITY REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK BY THE RESPONDENT AT OTTAWA, SAVE AND EXCEPT HEAD NURSES AND PERSONS ABOVE THE RANK OF HEAD NURSE, AND NURSES COVERED BY THE SUB-

SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE OTTAWA CIVIC HOSPITAL AND THE NURSES' ASSOCIATION, OTTAWA CIVIC HOSPITAL." (325 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR THE PURPOSE OF CLARITY, THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE BARGAINING UNIT DESCRIBED ABOVE SHALL BE DEEMED TO INCLUDE ONLY THOSE NOT UNDER A WRITTEN CONTRACT WITH THE RESPONDENT).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		316
NUMBER OF PERSONS WHO CAST BALLOTS	192	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	185	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	7	

375-71-R: SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL UNION 540 (APPLICANT) V. ROBERTS-GORDON APPLIANCE CORPORATION LIMITED (RESPONDENT) V. HEATING APPLIANCE WORKERS' UNION (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT GRIMSBY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (26 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES OF PERSONS ON VOTERS'		
LIST		23
NUMBER OF PERSONS WHO CAST BALLOTS	22	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	21	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF INTERVENER	1	

385-71-R: INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE AND PAPER MILL WORKERS (APPLICANT) V. GAGE STATIONERY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT GEORGETOWN, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (58 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS'		
LIST		56
NUMBER OF PERSONS WHO CAST BALLOTS	48	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	28	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	20	

421-71-R: INTERNATIONAL UNION OF DISTRICT 50, ALLIED AND TECHNICAL WORKERS OF THE UNITED STATES AND CANADA (APPLICANT) V. KNOX GELATINE OF CANADA LIMITED (RESPONDENT) V. TRENTON GELATINE WORKERS ASSOCIATION, LOCAL NO. 55, AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT TRENTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE, TECHNICAL, AND SALES STAFF." (19 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		21
NUMBER OF PERSONS WHO CAST BALLOTS	18	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	16	
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	2	

427-71-R: CANADIAN GUARDS ASSOCIATION (APPLICANT) V. YORK UNIVERSITY (RESPONDENT) V. INTERNATIONAL UNION UNITED PLANT GUARD WORKERS OF AMERICA, LOCAL 1962 (INTERVENER).

UNIT: "ALL SECURITY OFFICERS IN THE DEPARTMENT OF SAFETY AND SECURITY SERVICES OF THE RESPONDENT EMPLOYED TO PROTECT THE PROPERTY OF THE RESPONDENT, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (31 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		31
NUMBER OF PERSONS WHO CAST BALLOTS	26	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	25	
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	1	

APPLICATIONS CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

18838-70-R: LITHOGRAPHERS AND PHOTOENGRAVERS INTERNATIONAL UNION, LOCAL 224, OTTAWA, ONT. (APPLICANT) V. LE DROIT LTEE (RESPONDENT) V. LE SYNDICAT DE L'INDUSTRIE DE L'IMPRIMERIE DE LA REGION OTTAWA-HULL (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS COMMERCIAL PRINTING SHOPS AT OTTAWA, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (90 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		90
NUMBER OF PERSONS WHO CAST BALLOTS		90
NUMBER OF SPOILED BALLOTS	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	49	
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	40	

18948-70-R: NURSES' ASSOCIATION KINGSTON GENERAL HOSPITAL (APPLICANT) V. KINGSTON HOSPITAL, COMMONLY KNOWN AS THE KINGSTON GENERAL HOSPITAL (RESPONDENT) V. EMPLOYEE (OBJECTOR).

UNIT: "ALL REGISTERED AND GRADUATE NURSES OF THE RESPONDENT AT KINGSTON, EMPLOYED IN A NURSING OR TEACHING CAPACITY, SAVE AND EXCEPT SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR." (399 EMPLOYEES IN THE UNIT).

(THE BOARD FURTHER STATED IN ITS DECISION DATED MAY 5TH, 1971:

....THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT THOSE PERSONS CLASSIFIED BY THE RESPONDENT AS ASSISTANT SUPERVISORS ARE NOT INCLUDED IN THE BARGAINING UNIT AND ALSO THOSE PERSONS CLASSIFIED BY THE RESPONDENT AS CLINICAL CO-ORDINATORS ARE NOT INCLUDED IN THE BARGAINING UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		278
NUMBER OF PERSONS WHO CAST BALLOTS		243
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	239	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	4	

62-70-R: FUEL, BUS, LIMOUSINE, PETROLEUM DRIVERS AND ALLIED EMPLOYEES LOCAL UNION 352 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. INDUSMIN LIMITED (RESPONDENT) V. UNITED CEMENT, LIME AND GYPSUM WORKERS INTERNATIONAL UNION, C.L.C. (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWN OF MIDLAND, SIMCOE COUNTY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, WATCHMEN, JANITORS, AND LABORATORY TECH-

NICIANS." (24 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		26
NUMBER OF PERSONS WHO CAST BALLOTS	26	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	24	
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	2	

155-70-R: CHATHAM CONSTRUCTION WORKERS ASSOCIATION, LOCAL NO. 53 AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. RIVERSIDE CENTRAL ELECTRIC LIMITED (RESPONDENT) V. LOCAL UNION 773 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (INTERVENER).

UNIT: "ALL INSIDE ELECTRICAL WORKERS OF THE RESPONDENT IN THE COUNTY OF ESSEX." (6 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		7
NUMBER OF PERSONS WHO CAST BALLOTS	6	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	5	
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	1	

248-71-R: INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) V. CHESBAR IRON POWDER LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT NIAGARA FALLS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (36 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		32
NUMBER OF PERSONS WHO CAST BALLOTS	32	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	23	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	9	

346-71-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. CORNWALL STREET RAILWAY LIGHT & POWER COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT CORNWALL, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND ON A CO-OPERATIVE UNIVERSITY TRAINING PROGRAM." (32 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR PURPOSES OF CLARITY, THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE JANITOR AND THE DRAFTSMEN ARE OFFICE STAFF). (FOR PURPOSES OF CLARITY, THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT WORKMEN OCCASIONALLY EMPLOYED FOR SPECIAL CONSTRUCTION WORK ARE NOT INCLUDED IN THE BARGAINING UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		30
NUMBER OF PERSONS WHO CAST BALLOTS	30	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	30	
NUMBER OF BALLOTS MARKED IN FAVOUR OF DIVISION 946, AMALGAMATED TRANSIT UNION	0	

356-71-R: CHRISTIAN TRADE UNIONS OF CANADA (LOCAL 6) (APPLICANT) v. BERNIE'S LIGHTING SERVICE LIMITED (RESPONDENT) v. LOCAL UNION 105, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (INTERVENER).

UNIT: "ALL ELECTRICIANS AND ELECTRICIANS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN WENTWORTH COUNTY, THE TOWNSHIPS OF SENECA, RAINHAM, NORTH CAYUGA, SOUTH CAYUGA, ONEIDA AND WALPOLE IN HALDIMAND COUNTY AND THAT PORTION OF HALTON COUNTY WEST OF THE EIGHTH CONCESSION LINE AND SOUTH OF HIGHWAY 401, IN THE PROVINCE OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		2
NUMBER OF PERSONS WHO CAST BALLOTS	2	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	2	
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	0	

360-71-R: SERVICE EMPLOYEES UNION, LOCAL 204 AFFILIATED WITH THE S.E.I.U., A.F. OF L., C.I.O., C.L.C. (APPLICANT) v. TULLAMORE NURSING HOME LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BRAMPTON, REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, SAVE AND EXCEPT PROFESSIONAL NURSING STAFF, PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS,

SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR OR FOREMAN, OFFICE STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (22 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		24
NUMBER OF PERSONS WHO CAST BALLOTS	17	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	14	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	3	

373-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 527 (APPLICANT) V. VIBRAPIPE CONCRETE PRODUCTS LTD. (RESPONDENT) V. INTERNATIONAL UNION OF DISTRICT 50, U.M.W.A. (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT THE TOWNSHIP OF OSGOODE, SAVE AND EXCEPT OFFICE AND SALES STAFF, FOREMEN, THOSE ABOVE THE RANK OF FOREMAN, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERNATIONAL UNION OF DISTRICT 50, UNITED MINE WORKERS OF AMERICA, ON BEHALF OF LOCAL 15350." (25 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		16
NUMBER OF PERSONS WHO CAST BALLOTS	16	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	10	
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	6	

377-71-R: OIL & GAS BURNER TECHNICIANS UNION, LOCAL 1267 (APPLICANT) V. DAVIS OUTDOOR EQUIPMENT, DIVISION OF NORTHERN GILBRO MANUFACTURING LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT MALTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, SALES AND PARTS STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (43 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		37
NUMBER OF PERSONS WHO CAST BALLOTS	35	
BALLOTS SEGREGATED AND NOT COUNTED	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	23	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	11	

APPLICATIONS FOR CERTIFICATION DISMISSED DURING JUNE

NO VOTE CONDUCTED

17776-70-R: CANADIAN UNION OF CONSTRUCTION WORKERS (APPLICANT) V. ADENA INVESTMENTS LIMITED (RESPONDENT) V. COUNCIL OF CONCRETE-FORMING TRADE UNIONS (INTERVENER). (121 EMPLOYEES).

18659-70-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 93 (APPLICANT) V. BELCOURT CONSTRUCTION (OTTAWA) LIMITED (RESPONDENT). (6 EMPLOYEES).

(SEE DECISION [1971] OLRB REP. 321).

18979-70-R: CANADIAN MERCHANDISING EMPLOYEES' UNION (APPLICANT) V. STEINBERG'S LIMITED (RESPONDENT) V. RETAIL AND FOOD EMPLOYEES LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (INTERVENER #1) V. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 93 (INTERVENER #2) V. RETAIL CLERKS UNION, LOCAL NO. 486 CHARTERED BY THE RETAIL CLERKS INTERNATIONAL ASSOCIATION (INTERVENER #3) V. RETAIL CLERKS INTERNATIONAL ASSOCIATION (INTERVENER #4) V. GROUP OF EMPLOYEES (OBJECTORS). (145 EMPLOYEES).

(SEE DECISION [1971] OLRB REP. 329).

35-70-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE REGIONAL MUNICIPALITY OF YORK (RESPONDENT). (11 EMPLOYEES).

(SEE DECISION [1971] OLRB REP. 316).

73-70-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 247 (APPLICANT) V. CANADIAN DREDGE & DOCK LIMITED (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (INTERVENER #1) V. SEAFARERS' INTERNATIONAL UNION OF CANADA (INTERVENER #2). (3 EMPLOYEES).

287-71-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL UNION 1669 (APPLICANT) V. RICHARD-WILCOX (RESPONDENT). (4 EMPLOYEES).

328-71-R: CHATHAM CONSTRUCTION WORKERS ASSOCIATION LOCAL NO. 53, AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. R. T. CONSTRUCTION (RESPONDENT) V. LOCAL UNION 494 UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (INTERVENER). (2 EMPLOYEES).

(SEE DECISION [1971] OLRB REP. 342).

359-71-R: LE SYNDICAT DES SERVICES HOSPITALIERS DU DISTRICT D'OTTAWA, (CNS-CNTU) (APPLICANT) V. OTTAWA GENERAL HOSPITAL (RESPONDENT). (10 EMPLOYEES).

380-71-R: THE CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. DOMINION FORGE LIMITED (RESPONDENT) V. INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW), LOCAL 195 (INTERVENER). (6 EMPLOYEES).

424-71-R: GENERAL TRUCK DRIVERS' UNION LOCAL 938 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. COCHRANE-DUNLOP HARDWARE, LIMITED (RESPONDENT) V. RETAIL, WHOLESALE & DEPARTMENT STORE UNION, LOCAL 579 AFL:CIO:CLC (INTERVENER). (60 EMPLOYEES).

442-71-R: LABORERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 607 (APPLICANT) V. LAKEHEAD INSULATION CO. (RESPONDENT). (2 EMPLOYEES).

447-71-R: SERVICE EMPLOYEES UNION, LOCAL 204, AFFILIATED WITH THE S.E.I.U. A.F. OF L., C.I.O., C.L.C. (APPLICANT) V. NATION-WIDE INTERIOR MAINTENANCE CO. LTD. (RESPONDENT).

UNIT #1: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT THE CADILLAC BUILDING, 101 BLOOR STREET WEST, METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

UNIT #2: "ALL EMPLOYEES OF THE RESPONDENT AT THE STEPHEN LEACOCK SCHOOL IN THE BOROUGH OF SCARBOROUGH, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

448-71-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. LONDON HOUSING AUTHORITY (RESPONDENT). (12 EMPLOYEES).

484-71-R: THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 759 (APPLICANT) V. GATEWAY BUILDING & SUPPLY LTD. (RESPONDENT). (3 EMPLOYEES).

486-71-R: UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, LOCAL 232 (APPLICANT) V. THE GOODYEAR SERVICE STORES, A DIVISION OF THE GOODYEAR TIRE & RUBBER COMPANY OF CANADA, LIMITED (RESPONDENT). (9 EMPLOYEES).

507-71-R: SHEET METAL WORKERS INTERNATIONAL ASSOCIATION LOCAL 392 (APPLICANT) V. PEATSON ROOFING & HEATING LTD. (RESPONDENT). (4 EMPLOYEES).

546-71-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. ZEHR'S MARKETS LTD. (RESPONDENT). (129 EMPLOYEES).

585-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 247 (APPLICANT) V. CAMPEAU CORPORATION LIMITED (RESPONDENT). (8 EMPLOYEES).

CERTIFICATION DISMISSED SUBSEQUENT TO PRE-HEARING VOTE

306-71-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. THE BEAVER FURNITURE COMPANY LIMITED (RESPONDENT).

VOTING CONSTITUENCY #1: "ALL EMPLOYEES OF THE RESPONDENT AT KITCHENER, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD (HEREINAFTER REFERRED TO AS VOTING CONSTITUENCY #1)." (48 EMPLOYEES).

(THE BOARD FURTHER STATED IN ITS DECISION DATED MAY 6TH, 1971:

4. ... THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT STUDENTS EMPLOYED ON ORIENTATION AND TRAINING BASIS IN CO-OPERATION WITH LOCAL VOCATIONAL SCHOOLS ARE NOT EMPLOYEES OF THE RESPONDENT INCLUDED IN VOTING CONSTITUENCY #1).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		48
NUMBER OF PERSONS WHO CAST BALLOTS		48
NUMBER OF SPOILED BALLOTS	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	23	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	24	

VOTING CONSTITUENCY #2: "ALL EMPLOYEES OF THE RESPONDENT AT KITCHENER REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF (HEREINAFTER REFERRED TO AS VOTING CONSTITUENCY #2)." (2 EMPLOYEES).

(THE BOARD FURTHER STATED IN ITS DECISION DATED MAY 6TH, 1971:

7. ... THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT STUDENTS EMPLOYED ON ORIENTATION AND TRAINING BASIS IN CO-OPERATION WITH LOCAL VOCATIONAL SCHOOLS ARE NOT EMPLOYEES OF THE RESPONDENT INCLUDED IN VOTING CONSTITUENCY #2).

NUMBER OF PERSONS ON VOTERS' LIST	2
NUMBER OF PERSONS WHO CAST BALLOTS	2
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	2
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	0

327-71-R: LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, S.E.I.U., A.F. OF L., C.I.O., C.L.C. (APPLICANT) V. ALLIED PARKING SERVICES LIMITED (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT WELLINGTON SQUARE GARAGES AT LONDON, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (10 EMPLOYEES).

(THE BOARD FURTHER STATED IN ITS DECISION DATED MAY 10TH, 1971:

"....THAT PERSONS CLASSIFIED AS CLERKS ARE NOT EXCLUDED FROM THE VOTING CONSTITUENCY UNDER THE TERM OF OFFICE STAFF).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	10
NUMBER OF PERSONS WHO CAST BALLOTS	10
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	3
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	7

362-71-R: TEAMSTERS LOCAL UNION 879 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. PENINSULA READY-MIX & SUPPLIES LIMITED (RESPONDENT) V. CHRISTIAN LABOUR ASSOCIATION OF CANADA (INTERVENER).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT BEAMSVILLE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF." (9 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	8
NUMBER OF PERSONS WHO CAST BALLOTS	7
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	1
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	6

386-71-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. ORILLIA SOLDIERS' MEMORIAL HOSPITAL (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (INTERVENER).

VOTING CONSTITUENCY: "ALL STATIONARY ENGINEERS AND HELPERS IN THE EMPLOY OF THE RESPONDENT AT ORILLIA, SAVE AND EXCEPT THE CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF CHIEF ENGINEER." (4 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	4
NUMBER OF PERSONS WHO CAST BALLOTS	4
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	1
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	3

425-71-R: CANADIAN MERCHANDISING EMPLOYEES' UNION (APPLICANT) V. BILL'S I.G.A. (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT IN OTTAWA, SAVE AND EXCEPT ASSISTANT STORE MANAGER, PERSONS ABOVE THE RANK OF ASSISTANT STORE MANAGER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (19 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	10
NUMBER OF PERSONS WHO CAST BALLOTS	10
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	3
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	7

456-71-R: UNITED TEXTILE WORKERS OF AMERICA (APPLICANT) V. E. E. PAQUETTE & SONS LIMITED (RESPONDENT) V. E. E. PAQUETTE & SONS LIMITED, SOCIAL & WELFARE COMMITTEE (INTERVENER).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT WOODSTOCK, INCLUDING PIECE WORKERS, TIME WORKERS AND SALARIED WORKERS." (92 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		93
NUMBER OF PERSONS WHO CAST BALLOTS		91
BALLOTS SEGREGATED AND NOT COUNTED	4	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	31	
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	56	

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

18648-70-R: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (AFL-CIO-CLC) (APPLICANT) V. BRACEBRIDGE WORKS, WIRE & CABLE DIVISION AL-
CAN CANADA PRODUCTS, A DIVISION OF ALUMINUM CO. OF CANADA LIMITED
(RESPONDENT) V. UNITED STEELWORKERS OF AMERICA (INTERVENER).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT BRACEBRIDGE,
SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND
SALES STAFF." (14 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		29
NUMBER OF PERSONS WHO CAST BALLOTS		30
BALLOTS SEGREGATED AND NOT COUNTED	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	11	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	18	

317-71-R: LOCAL 1590, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS,
AFL-CIO, CLC (APPLICANT) V. McDONALD APPLIANCE SERVICE LIMITED (RE-
SPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN METROPOLITAN TO-
RONTO AS APPLIANCE SERVICEMEN, SAVE AND EXCEPT SUPERVISORS, PERSONS
ABOVE THE RANK OF SUPERVISOR, OFFICE AND WAREHOUSE STAFF." (39 EM-
PLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		42
NUMBER OF PERSONS WHO CAST BALLOTS		35
BALLOTS SEGREGATED AND NOT COUNTED	4	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	8	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	23	

414-71-R: SERVICE EMPLOYEES UNION, LOCAL 210 (APPLICANT) V. THE CORPORATION OF THE COUNTY OF BRUCE (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS HIGHWAYS DEPARTMENT SAVE AND EXCEPT PATROLMEN, CONSTRUCTION FOREMEN, CHIEF SURVEYOR, PERSONS ABOVE THE RANKS OF PATROLMAN, CONSTRUCTION FOREMAN AND CHIEF SURVEYOR, OFFICE EMPLOYEES, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (46 EMPLOYEES IN THE UNIT).

(THE BOARD FURTHER STATED IN ITS DECISION DATED JUNE 1ST, 1971:

...THAT PERSONS CASUALLY EMPLOYED FOR SHORT PERIODS MARKING HIGHWAYS, ERECTING SNOW FENCING AND PERSONS EMPLOYED AS INSPECTORS OR WEIGHMEN HAVE NO COMMUNITY OF INTEREST WITH PERSONS INCLUDED IN THE BARGAINING UNIT AND ARE ACCORDINGLY EXCLUDED FROM THE BARGAINING UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	47
NUMBER OF PERSONS WHO CAST BALLOTS	47
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	20
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	27

429-71-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. IROQUOIS ENTERPRISES (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT IROQUOIS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (21 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	18
NUMBER OF PERSONS WHO CAST BALLOTS	17
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	5
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	12

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING JUNE

506-71-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. A. COPE & SONS LTD. (RESPONDENT). (23 EMPLOYEES).

509-71-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION 721 (APPLICANT) V. BENNET-PRATT LIMITED (RESPONDENT). (2 EMPLOYEES).

513-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. TONY SUPPA CONSTRUCTION (RESPONDENT). (8 EMPLOYEES).

518-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. VULCAN ASPHALT AND SUPPLY COMPANY LIMITED (RESPONDENT). (12 EMPLOYEES).

535-71-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. GREENWIN CONST. CO. LTD. (RESPONDENT). (NO EMPLOYEES).

543-71-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. ZEHR'S MARKETS LTD. (RESPONDENT). (45 EMPLOYEES).

545-71-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. ZEHR'S MARKETS LTD. (RESPONDENT). (19 EMPLOYEES).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED
OF DURING JUNE

28-71-R: DONALD M. BUTTER AND H. WILSON (APPLICANTS) V. LOCAL 772 THE INTERNATIONAL UNION OF OPERATING ENGINEERS (RESPONDENT). (GRANTED).

UNIT: "ALL STATIONARY ENGINEERS AND HELPERS, EMPLOYED IN THE BOILER HOUSE OF THE FIRESTONE TIRE & RUBBER COMPANY OF CANADA LIMITED AT HAMILTON, SAVE AND EXCEPT THE CHIEF ENGINEER." (14 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	14
NUMBER OF PERSONS WHO CAST BALLOTS	14
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	2
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	12

342-71-R: ROLAND D. HUSSEY, B. VISCONTI, L. PORCO, THERESA CMEKAK, TERRY EMMONS, ALBERT GEE, O. HESTEN, L. LAWRENCE, S. ELLERBUSCH, RUDOLF KLEINODER AND CYRIL LEE (APPLICANTS) V. INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (RESPONDENT) V. EMMONS TOOL & DIE CO. LTD. (INTERVENER). (GRANTED).

UNIT: "ALL EMPLOYEES OF EMMONS TOOL & DIE CO. LIMITED AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (17 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		15
NUMBER OF PERSONS WHO CAST BALLOTS	12	
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	1	
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	11	

379-71-R: MICHAEL PLAHOURAS (APPLICANT) V. UNITED STEELWORKERS OF AMERICA (RESPONDENT) V. BERG MFG. (CANADA) LIMITED (INTERVENER). (GRANTED).

UNIT: "ALL EMPLOYEES OF BERG MFG. (CANADA) LIMITED IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (32 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		35
NUMBER OF PERSONS WHO CAST BALLOTS	35	
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	16	
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	19	

416-71-R: LOUIS J. LARIVEE, MELVIN YOUNG, REG. RUTTAN (APPLICANTS) V. NCCL LOCAL 167 CANADIAN WOODWORKERS UNION (RESPONDENT). (4 EMPLOYEES). (DISMISSED).

430-71-R: SHIRLEY TOBEY (APPLICANT) V. SERVICE EMPLOYEES' UNION, LOCAL 210 (RESPONDENT). (50 EMPLOYEES). (DISMISSED).

461-71-R: BERGMAN BUILDERS KENORA LIMITED (APPLICANT) V. LUMBER AND SAWMILL WORKERS UNION, LOCAL 2693 (RESPONDENT). (5 EMPLOYEES). (WITHDRAWN).

497-71-R: MARY E. JOHNSTON AND EDNA A. EDGAR (APPLICANTS) V. AMALGAMATED CLOTHING WORKERS OF AMERICA (RESPONDENT). (48 EMPLOYEES). (DISMISSED).

514-71-R: LLOYD MERKLEY (APPLICANT) V. "C.O.P.E." CANADIAN UNION OF PUBLIC EMPLOYEES (RESPONDENT). (16 EMPLOYEES). (DISMISSED).

538-71-R: THE ONTARIO MILK MARKETING BOARD (APPLICANT) V. CANADIAN FOOD AND ALLIED WORKERS, CHARTERED BY THE AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (RESPONDENT). (1 EMPLOYEES). (GRANTED).

APPLICATION FOR DECLARATION OF SUCCESSOR STATUS DISPOSED OF DURING

JUNE

331-71-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. NAVCO FOOD SERVICES LIMITED (RESPONDENT). (GRANTED).

(SEE DECISION [1971] OLRB REP. 326).

APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING

JUNE

81-70-U: COCHRANE ENTERPRISES LTD. (APPLICANT) V. THE LUMBER AND SAWMILL WORKERS UNION LOCAL 2995, CAMILLE GRENIER ET AL (RESPONDENTS). (WITHDRAWN).

325-71-U: THE PRESTOLITE COMPANY DIVISION OF ELTRA OF CANADA LIMITED (APPLICANT) V. DOREEN ADLER, MURIEL AMOS ET AL (RESPONDENTS). (WITHDRAWN).

460-71-U: DUPLATE CANADA LIMITED (APPLICANT) V. THOSE PERSONS NAMED IN SCHEDULE "A" ATTACHED HERETO (RESPONDENTS). (WITHDRAWN).

519-71-U: ELLIS DON LIMITED (APPLICANT) V. JAMES HARROWER (RESPONDENT). (WITHDRAWN).

594-71-U: CANADIAN JOHNS-MANVILLE CO., LIMITED (APPLICANT) V. INTERNATIONAL CHEMICAL WORKERS UNION LOCAL 346 AND INTERNATIONAL CHEMICAL WORKERS UNION (RESPONDENTS). (WITHDRAWN).

601-71-U: DOMINION GLASS COMPANY LIMITED (APPLICANT) V. THOSE PERSONS NAMED IN SCHEDULE "A" ATTACHED HERETO (RESPONDENTS). (GRANTED).

604-71-U: DOMINION GLASS COMPANY LIMITED (APPLICANT) V. THOSE PERSONS NAMED IN SCHEDULE "A" ATTACHED HERETO (RESPONDENTS). (GRANTED).

(SEE DECISION [1971] OLRB REP. 354).

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING JUNE

18889-70-U: RALPH M. PARSONS CONSTRUCTION CO. OF CANADA LIMITED (APPLICANT) V. GERARD GIROUX AND THE UNITED ASSOCIATION OF JOURNEMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA (RESPONDENTS). (WITHDRAWN).

78-70-U: DAISONS PRESS LIMITED (APPLICANT) V. TORONTO TYPOGRAPHICAL UNION, No. 91 (RESPONDENT). (WITHDRAWN).

297-71-U: THOMAS L. REES (APPLICANT) V. STEINBERG'S LIMITED (MIRACLE MART DIVISION) (RESPONDENT). (WITHDRAWN).

363-71-U: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (APPLICANT) V. THE OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 117, ANGELO BURIGANA AND CHARLES W. IRVINE (RESPONDENTS).

- AND -

364-71-U: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (APPLICANT) V. THE OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 117, ANGELO BURIGANA AND CHARLES W. IRVINE (RESPONDENTS).

- AND -

365-71-U: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (APPLICANT) V. THE OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 117, ANGELO BURIGANA AND CHARLES W. IRVINE (RESPONDENTS).

- AND -

366-71-U: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (APPLICANT) V. THE OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 117, ANGELO BURIGANA AND CHARLES W. IRVINE (RESPONDENTS).

- AND -

367-71-U: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (APPLICANT) V. THE OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 117, ANGELO BURIGANA AND CHARLES W. IRVINE (RESPONDENTS).

- AND -

368-71-U: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (APPLICANT) V. THE OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 117, ANGELO BURIGANA AND CHARLES W. IRVINE (RESPONDENTS).

- AND -

369-71-U: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (APPLICANT) V. THE OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 117, ANGELO BURIGANA AND CHARLES W. IRVINE (RESPONDENTS). (GRANTED).

402-71-U: DRAFTSMEN'S ASSOCIATION OF ONTARIO, LOCAL 164, AMERICAN FEDERATION OF TECHNICAL ENGINEERS, A.F.L.-C.I.O., C.L.C. (APPLICANT) V. CANADIAN WESTINGHOUSE COMPANY LIMITED (RESPONDENT). (DISMISSED).

(SEE DECISION [1971] OLRB REP. 348).

413-71-U: CANADIAN UNION OF PUBLIC EMPLOYEES LOCAL 1323 (APPLICANT) V. THE CORPORATION OF THE TOWNSHIP OF GEORGINA (RESPONDENT). (WITHDRAWN).

423-71-U: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA - LOCAL 527 (APPLICANT) V. DODGE CONSTRUCTION COMPANY LIMITED (RESPONDENT). (WITHDRAWN).

467-71-U: MCCONNELL & SON 1962 LIMITED (APPLICANT) V. GREGORY LE PAGE (RESPONDENT). (GRANTED).

498-71-U: GENERAL TRUCK DRIVERS' UNION LOCAL 879 (APPLICANT) V. DAY & CAMPBELL LIMITED (RESPONDENT). (DISMISSED).

504-71-U: GENERAL TRUCK DRIVERS' UNION LOCAL 879 (APPLICANT) V. DAY & CAMPBELL LIMITED (RESPONDENT). (DISMISSED).

555-71-U: ASSOCIATED FUR INDUSTRIES OF TORONTO INC. (APPLICANT) V. FUR WORKERS' UNION, LOCAL 82, AFFILIATED WITH AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO (RESPONDENT). (WITHDRAWN).

556-71-U: ASSOCIATED FUR INDUSTRIES OF TORONTO INC. (APPLICANT) V. MAX FEDERMAN (RESPONDENT). (WITHDRAWN).

583-71-U: FUR WORKERS' UNION, LOCAL 82, AFFILIATED WITH AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO (APPLICANT) V. ASSOCIATED FUR INDUSTRIES OF TORONTO INC., SAM DENNIS, HENRY BACHNER, BEN SHAPIRO, SAUL GOODMAN, BENDER-GOODMAN FURS AND NELSON FURS (RESPONDENTS). (WITHDRAWN).

COMPLAINTS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE) DISPOSED OF DURING

JUNE

136-70-U: ROBERT D. SAN CARTIER (COMPLAINANT) V. BLAW-KNOX OF CANADA LIMITED (RESPONDENT). (DISMISSED).

224-71-U: TEAMSTERS' LOCAL UNION NO. 230, READY MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSE-

MEN & HELPERS OF AMERICA (COMPLAINANT) V. BLAW-KNOX OF CANADA LIMITED (RESPONDENT). (DISMISSED).

241-71-U: WILLIAM HARTNETT (COMPLAINANT) V. THE OTTAWA NEWSPAPER GUILD, LOCAL 205 OF THE AMERICAN NEWSPAPER GUILD (RESPONDENT). (WITHDRAWN).

242-71-U: CHARLES DALY (COMPLAINANT) V. THE OTTAWA NEWSPAPER GUILD, LOCAL 205 OF THE AMERICAN NEWSPAPER GUILD (RESPONDENT). (WITHDRAWN).

267-71-U: CANADIAN UNION OF CONSTRUCTION WORKERS (COMPLAINANT) V. SCHWENGER CONSTRUCTION LIMITED (RESPONDENT). (DISMISSED).

280-71-U: YVON ROBICHAUD (COMPLAINANT) V. LOCAL 786 INTERNATIONAL ASSOCIATION OF BRIDGE STRUCTURAL & ORNAMENTAL IRON WORKERS (RESPONDENT). (DISMISSED).

(SEE DECISION [1971] OLRB REP. 305).

393-71-U: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (COMPLAINANT) V. J. K. SMIT & SONS DIAMOND PRODUCTS LIMITED (RESPONDENT). (GRANTED).

394-71-U: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (COMPLAINANT) V. J. K. SMIT & SONS DIAMOND PRODUCTS LIMITED (RESPONDENT). (GRANTED).

433-71-U: UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL CIO CLC (COMPLAINANT) V. THE GEO. CLUTHE MANUFACTURING COMPANY LIMITED (RESPONDENT). (WITHDRAWN).

434-71-U: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (COMPLAINANT) V. IROQUOIS ENTERPRISES (RESPONDENT). (WITHDRAWN).

465-71-U: OIL & GAS BURNER TECHNICIANS' UNION LOCAL 1267 (COMPLAINANT) V. DAVIS OUTDOOR EQUIPMENT (RESPONDENT). (WITHDRAWN).

480-71-U: ARTHUR I. DUNKLEY (COMPLAINANT) V. SUPERIOR PIPE LINES CONT., 91 ANN ST., BARRIE, ONT., LABOUR INTERNATIONAL UNION LOCAL 183, 1033 ST. CLAIR AVE. W., TORONTO (RESPONDENT). (WITHDRAWN).

536-71-U: JACK VAN HOORN (COMPLAINANT) V. UAW LOCAL 707 (RESPONDENT). (WITHDRAWN).

APPLICATIONS UNDER SECTION 35(A) DISPOSED OF DURING JUNE

171-70-M: PETER VERDUN (APPLICANT) V. INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL 880 (RESPONDENT TRADE UNION) V. KOOTSTRA LIMITED (RESPONDENT EMPLOYER). (WITHDRAWN).

180-70-M: RALPH FLEDDERUS (APPLICANT) V. UNITED STEELWORKERS OF AMERICA, LOCAL 5475 (RESPONDENT TRADE UNION) V. MANNING, MAXWELL AND MOORE DIVISION, DRESSER INDUSTRIES CANADA, LTD. (RESPONDENT EMPLOYER). (WITHDRAWN).

APPLICATIONS FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT

439-71-M: MILNER ROAD ENTERPRISES, LTD. (COMPANY) V. INTERNATIONAL UNION OF DOLL & TOY WORKERS OF THE UNITED STATES AND CANADA, LOCAL 905 (TRADE UNION). (GRANTED).

457-71-M: EMERY ENGINEERING & CONTRACTING CO. LTD. BARRIE, ONTARIO (EMPLOYER) V. CENTRAL ONTARIO DISTRICT COUNCIL ON BEHALF OF LOCAL UNIONS 1304, 2480, AND 2482 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (TRADE UNION). (GRANTED).

JURISDICTIONAL DISPUTE

659-71-JD: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837 (COMPLAINANT) V. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 18 AND JOHN E. SMITH & SON LATH, PLASTER & ACOUSTICAL CONTRACTORS (1968) LIMITED (RESPONDENTS).

(SEE DECISION [1971] OLRB REP. 356).

REFERENCES TO BOARD PURSUANT TO SECTION 79A

176-70-M: THE INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, LOCAL 559 (TRADE UNION) V. BAUSCH AND LOMB OPTICAL COMPANY LIMITED (EMPLOYER).

(SEE DECISION [1971] OLRB REP. 318).

225-71-M: HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION LOCAL 197 (TRADE UNION) V. WENTWORTH ARMS HOTEL LIMITED (EMPLOYER).

- AND -

226-71-M: HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL

UNION LOCAL 197 (TRADE UNION) V. TERMINAL HOTEL (EMPLOYER).

- AND -

227-71-M: HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION LOCAL 197 (TRADE UNION) V. KENILWORTH HOUSE (EMPLOYER).

- AND -

228-71-M: HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION LOCAL 197 (TRADE UNION) V. GRAND HOUSE LIMITED (EMPLOYER).

- AND -

229-71-M: HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION LOCAL 197 (TRADE UNION) V. HOMESIDE HOUSE (EMPLOYER).

- AND -

230-71-M: HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION LOCAL 197 (TRADE UNION) V. CARLTON HOUSE (EMPLOYER).

- AND -

231-71-M: HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION LOCAL 197 (TRADE UNION) V. MODJESKA HOUSE LIMITED (EMPLOYER).

- AND -

232-71-M: HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION LOCAL 197 (TRADE UNION) V. COLONIAL PUBLIC HOUSE (EMPLOYER).

- AND -

233-71-M: HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION LOCAL 197 (TRADE UNION) V. WESTDALE HOTEL (EMPLOYER).

- AND -

234-71-M: HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION LOCAL 197 (TRADE UNION) V. PICADILLY HOUSE (EMPLOYER).

(SEE DECISION [1971] OLRB REP. 308).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

40-70-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. UNIVERSITY OF WINDSOR (RESPONDENT) V. INTERNATIONAL UNION, UNITED PLANT GUARD WORKERS OF AMERICA, AMALGAMATED PLANT GUARDS, LOCAL 1958 (INTERVENER). (REQUEST DENIED).

(SEE DECISION [1971] OLRB REP. 344).

415-71-R: HOTEL AND RESTAURANT EMPLOYEES UNION, LOCAL 743, WINDSOR, ONTARIO, AFFILIATED WITH HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION: AFL-CIO (APPLICANT) V. DORNA REALTY ASSOCIATES LIMITED (RESPONDENT). (REQUEST DENIED).

416-71-R: LOUIS J. LARIVEE, MELVIN YOUNG, REG. RUTTAN (APPLICANTS) V. NCCL LOCAL 167 CANADIAN WOODWORKERS UNION (RESPONDENT). (REQUEST DENIED).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - SECTION 65

18666-70-U: TORONTO MAILERS' UNION, NO. 5 (COMPLAINANT) V. TORONTO
STAR LIMITED (RESPONDENT). (REQUEST DENIED).

(SEE DECISION [1971] OLRB REP. 346).

STATISTICAL TABLES - FISCAL YEAR 1971-72

TABLE I

APPLICATIONS AND COMPLAINTS FILED WITH THE ONTARIO LABOUR RELATIONS BOARD

		<u>NUMBER FILED</u>	
		<u>1ST 3 MONTHS OF FISCAL YEAR</u>	
		<u>1971-72</u>	<u>1970-71</u>
I.	CERTIFICATION	265	311
II.	DECLARATION TERMINATING BARGAINING RIGHTS	24	26
III.	DECLARATION OF SUCCESSOR STATUS	4	5
IV.	DECLARATION THAT STRIKE UNLAWFUL	18	19
V.	DECLARATION THAT LOCKOUT UNLAWFUL	-	1
VI.	CONSENT TO PROSECUTE	96	28
VII.	COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	48	47
VIII.	MISCELLANEOUS	<u>35</u>	<u>23</u>
TOTAL		<u>490</u>	<u>460</u>

TABLE II

HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

		<u>NUMBER</u>	
		<u>1ST 3 MONTHS OF FISCAL YEAR</u>	
		<u>1971-72</u>	<u>1970-71</u>
HEARINGS AND CONTINUATION OF HEARINGS BY THE BOARD		232	318

TABLE III

APPLICATIONS AND COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS
BOARD BY MAJOR TYPES

	<u>NUMBER DISPOSED OF</u>	
	<u>1ST 3 MONTHS OF FISCAL YR.</u> <u>1971-72</u>	<u>1970-71</u>
I. CERTIFICATION	259	335
II. DECLARATION TERMINATING BARGAINING RIGHTS	16	25
III. DECLARATION OF SUCCESSOR STATUS	4	5
IV. DECLARATION THAT STRIKE UNLAWFUL	15	18
V. DECLARATION THAT LOCK- OUT UNLAWFUL	1	1
VI. CONSENT TO PROSECUTE	35	31
VII. COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	37	45
VIII. MISCELLANEOUS	<u>30</u>	<u>25</u>
TOTAL	<u>397</u>	<u>485</u>

TABLE IVAPPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARDBY TYPE AND DISPOSITION

	<u>NUMBER OF APPLICATIONS</u>		<u>NUMBER OF EMPLOYEES*</u>	
	<u>1ST 3 MONTHS FISCAL YR.</u>		<u>1ST 3 MONTHS FISCAL YR.</u>	
	<u>1971-72</u>	<u>1970-71</u>	<u>1971-72</u>	<u>1970-71</u>
I. <u>CERTIFICATION</u>				
GRANTED	152	236	5023	7051
DISMISSED	88	70	4179	2012
WITHDRAWN	<u>19</u>	<u>29</u>	<u>498</u>	<u>1241</u>
TOTAL	<u>259</u>	<u>335</u>	<u>9700</u>	<u>10304</u>
II. <u>TERMINATION</u> <u>OF BARGAINING</u> <u>RIGHTS</u>				
GRANTED	7	9	502	185
DISMISSED	7	12	192	1264
WITHDRAWN	<u>2</u>	<u>3</u>	<u>53</u>	<u>417</u>
TOTAL	<u>16</u>	<u>24</u>	<u>747</u>	<u>1866</u>

*THESE FIGURES REFER TO THE NUMBER OF EMPLOYEES DIRECTLY AFFECTED AND ARE BASED ON THE NUMBER OF EMPLOYEES IN THE BARGAINING UNITS AT THE TIME THE APPLICATIONS FOR CERTIFICATION WERE FILED WITH THE BOARD. TOTALS FOR APPLICATIONS DISMISSED AND WITHDRAWN ARE APPROXIMATE.

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD BY
TYPE AND DISPOSITION (CONTINUED)

		<u>NUMBER OF APPLICATIONS</u>	
		<u>1ST 3 MONTHS FISCAL YR.</u>	
		<u>1971-72</u>	<u>1970-71</u>
III.	<u>DECLARATION THAT STRIKE</u> <u>UNLAWFUL</u>		
	GRANTED	5	-
	DISMISSED	1	-
	WITHDRAWN	<u>9</u>	<u>18</u>
	TOTAL	<u>15</u>	<u>18</u>
IV.	<u>DECLARATION THAT LOCK-</u> <u>OUT UNLAWFUL</u>		
	GRANTED	-	-
	DISMISSED	1	1
	WITHDRAWN	-	-
	TOTAL	<u>1</u>	<u>1</u>
V.	<u>CONSENT TO PROSECUTE</u>		
	GRANTED	16	7
	DISMISSED	3	3
	WITHDRAWN	<u>16</u>	<u>21</u>
	TOTAL	<u>35</u>	<u>31</u>
VI.	<u>COMPLAINT OF UNFAIR</u> <u>PRACTICE IN EMPLOYMENT</u> <u>(SECTION 65)</u>		
	GRANTED	5	4
	DISMISSED	10	11
	WITHDRAWN	<u>22</u>	<u>30</u>
	TOTAL	<u>37</u>	<u>45</u>

TABLE V

REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED OF BY
THE ONTARIO LABOUR RELATIONS BOARD

	<u>NUMBER OF VOTES</u>	
	<u>1ST 3 MTHS FISCAL YR.</u>	
	<u>1971-72</u>	<u>1970-71</u>
<u>CERTIFICATION AFTER VOTE*</u>		
PRE-HEARING VOTE	12	4
POST-HEARING VOTE	15	11
BALLOTS NOT COUNTED	-	-
 <u>DISMISSED AFTER VOTE</u>		
PRE-HEARING VOTE	17	6
POST-HEARING VOTE	14	21
BALLOTS NOT COUNTED	-	3
TOTAL	<u>58</u>	<u>45</u>

*INCLUDES APPLICANT-INTERVENER APPLICATION IN WHICH BOTH APPLICANT AND INTERVENER APPLY FOR A NEW UNIT AND EITHER APPLICANT OR INTERVENER IS CERTIFIED.

TABLE VI

REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF BY
THE ONTARIO LABOUR RELATIONS BOARD

	<u>NUMBER OF VOTES</u>	
	<u>1ST 3 MTHS FISCAL YR.</u>	
	<u>1971-72</u>	<u>1970-71</u>
*RESPONDENT UNION SUCCESSFUL	-	-
RESPONDENT UNION UNSUCCESSFUL	<u>5</u>	<u>7</u>
TOTAL	<u>5</u>	<u>7</u>

*IN TERMINATION PROCEEDINGS WHERE A VOTE IS TAKEN THE APPLICANT IS A GROUP OF EMPLOYEES OR THE EMPLOYER; THE INCUMBENT UNION IS THUS THE RESPONDENT.

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